

is appropriate for summary disposition. We reject Alberts' arguments and summarily affirm the amended judgment and order. *See* WIS. STAT. RULE 809.21.¹

In March 2004, the State charged Alberts with one count of stalking, two counts of unlawful use of a telephone contrary to WIS. STAT. § 947.012(1)(a), and five counts of unlawful use of a telephone contrary to § 947.012(1)(b), with all eight counts alleged as a repeater. The charges stemmed from a series of more than 2000 phone calls Alberts made to his former girlfriend in February and March 2004. After a trial, the jury found Alberts guilty of stalking and three counts of unlawful use of a telephone under § 947.012(1)(b), all as a repeater, and acquitted him of the remaining charges. The circuit court imposed consecutive maximum sentences on each of the four counts, totaling eleven and one-half years, consisting of eight years' initial confinement and three and one-half years' extended supervision. Relevant to this appeal, one of the conditions of extended supervision prohibited Alberts from possessing or using cell phones.

In June 2017, Alberts filed a petition to modify the "no cell phone" condition of his extended supervision on grounds that: (1) a cell phone would increase his chances of obtaining employment as a long-haul, over-the-road truck driver; (2) his convictions did not involve the use of a cell phone but, rather, his grandmother's landline; (3) advances in cell phone technology since the condition was originally imposed would make it easier for his parole agent to locate/contact him and for anyone to block unwanted calls, including those from Alberts; (4) he had completed domestic violence programs and had not attempted to contact the victim; and

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(5) the condition did not accomplish the dual goals of advancing public protection and offender rehabilitation. The circuit court entered an amended judgment of conviction, modifying the condition to allow Alberts, “with agent approval,” to “use a simple cell phone that does not have internet access.”

Alberts moved for reconsideration, contending he has had no internet or digital communication crimes nor sexually motivated crimes “now or in the past,” and the new internet restriction would cause his “agent to restrict or deny internet access.” Alberts added that the internet provides a forum for the exchange of views and other First Amendment activities. The circuit court denied the motion for reconsideration, concluding Alberts failed to provide “a sufficient factual or legal basis for the motion.” Alberts appeals.

In an appeal from an order granting or denying a petition to modify a condition of extended supervision, “[t]he appellate court may reverse the order only if it determines that the sentencing court erroneously exercised its discretion in granting or denying the petition.” WIS. STAT. § 302.113(7m)(d). “Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court’s discretionary decision.” *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

Here, we conclude the circuit court properly exercised its discretion by allowing Alberts to have a cell phone that met the needs he identified in his petition to modify the no-cell-phone condition of his extended supervision. Specifically, as noted above, Alberts claimed a cell phone would increase his employment opportunities. His petition, however, said nothing about needing

a cell phone with internet capabilities. The circuit court, therefore, properly denied Alberts' motion for reconsideration, as it had granted Alberts the relief he requested in his petition.

On appeal, Alberts cites federal cases discussing prohibitions on internet use as a condition of supervision. The modified condition in this case, however, does not prohibit Alberts from accessing the internet from devices other than a cell phone and, ultimately, Alberts failed to identify any specific reason he needs to access the internet on his mobile phone. To the extent Alberts asserts that the modified condition is "akin to an upward variance" in his sentence, Alberts ignores the fact that the original condition imposed a total ban on Albert's possession or use of cell phones. Thus, the modified condition was a loosening of that restriction.

Alberts also appears to question the circuit court's authority to modify a condition of extended supervision. As the State notes, this argument is self-defeating. If the circuit court lacked the authority to modify a condition of extended supervision, then Alberts would be left with the original no-cell-phone condition. In any event, WIS. STAT. § 302.113(7m)(a) expressly grants the circuit court authority to modify a condition of extended supervision. While Alberts may question the rationale or efficacy of the modified condition, especially in relation to his crimes, the circuit court did not erroneously exercise its discretion in modifying the condition consistent with Alberts' petition. We therefore affirm the amended judgment and the order denying reconsideration.

Upon the foregoing,

IT IS ORDERED that the amended judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals