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DISTRICT I

July 25, 2019

To:

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1226

State of Wisconsin ex rel. Tervino Williams v. Brian Hayes
(L.C. # 2017CV3723)

Before Brash, P.J., Kessler and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tervino Williams appeals the circuit court's order affirming a decision of the Division of Hearing and Appeals revoking his parole. Williams argues that there was insufficient evidence to support the revocation decision. He also argues that the Division of Hearings and Appeals erred in failing to impose a period of reincarceration consistent with the Department of Corrections Probation and Parole Operations Manual. After review of the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

A circuit court reviews a decision of the Division of Hearings and Appeals to revoke parole via a writ of certiorari. WIS. STAT. § 801.50(5). On appeal, we review the decision of the Division of Hearings and Appeals, not the decision of the circuit court. *See State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385-86, 585 N.W.2d 640 (Ct. App. 1998). Judicial review on certiorari is limited in scope. *Id.* at 385. Where, as here, a challenge is made to the evidentiary basis for the agency’s decision, we will uphold the decision if “the evidence of record substantiates the decision.” *See id.* It is well established that a violation of a condition of parole “is a sufficient ground for revocation.” *State ex rel. Cutler v. Schmidt*, 73 Wis. 2d 620, 622, 244 N.W.2d 230 (1976) (citation omitted). A revocation decision “is conclusive unless the [offender] can prove by a preponderance of the evidence the [agency’s] action was arbitrary and capricious.” *State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (citation omitted). “That burden rests squarely on the [offender], and if he fails to sustain the burden, the courts will not interfere with the [revocation] decision.” *Id.* (citation omitted).

It is undisputed that Williams admitted repeatedly leaving Wisconsin to stay with his brother in Louisiana. Williams left the state without the permission of his supervising agent and in violation of his parole rules. These violations were sufficient evidence to support the decision to revoke Williams’s parole. *See State ex rel. Solie v. Schmidt*, 73 Wis. 2d 76, 80, 242 N.W.2d 244 (1976) (leaving Wisconsin without permission while on probation warranted revocation).

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Williams raises several arguments pertaining to a videotape from a convenience store in Louisiana that shows Williams exposing himself and masturbating in public. The videotape was considered during the revocation hearing. We need not address these arguments because the fact that Williams left Wisconsin without his agent's permission, without more, was sufficient grounds for his revocation.²

Williams next argues that the Division of Hearings and Appeals erred in failing to impose a period of reincarceration consistent with the Department of Corrections Probation and Parole Operations Manual. This argument is unavailing. We have previously held that the Division of Hearings and Appeals is not required to follow the reincarceration guidelines provided by the Department of Corrections Operations Manual. *See George v. Schwarz*, 2001 WI App 72, ¶¶19-24, 242 Wis. 2d 450, 626 N.W.2d 57.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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

² We note that several people, including Williams's supervising agent, identified Williams as the person in the videotape.