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**DISTRICT I**

June 9, 2020

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

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2017AP2225-NM

In re the commitment of Damien Rudebush: State of Wisconsin v.  
Damien Rudebush (L.C. # 1998CI19)

Before Blanchard, Dugan and White, 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).**

Damien Rudebush, who was found to be a sexually violent person in 2003, appeals from a circuit court order revoking his supervised release. *See* WIS. STAT. § 980.08(8) (2015-16).<sup>1</sup> Rudebush's appellate counsel, Dennis Schertz, filed a no-merit report pursuant to WIS. STAT.

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

RULE 809.32, *State ex rel. Seibert v. Macht*, 2001 WI 67, ¶20, 244 Wis. 2d 378, 627 N.W.2d 881, and *Anders v. California*, 386 U.S. 738 (1967). Rudebush was served with a copy of the no-merit report and advised of his right to file a response, but he has not filed a response. We have independently reviewed the record and the no-merit report, as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the order.

In 2003, Rudebush was found to be a sexually violent person pursuant to WIS. STAT. ch. 980 (2003-04). In 2015, he was granted supervised release pursuant to § 980.08 (2015-16). After an exhaustive search for housing for Rudebush, he was ultimately placed in a home in Ashland County with a roommate who was also on supervised release. Less than two months later, in December 2016, the State took Rudebush into custody and subsequently filed a petition for revocation of Rudebush's supervised release.

The petition alleged that Rudebush violated the rules of supervised release on three occasions, including engaging "in inappropriate and argumentative behavior towards contracted staff," having unauthorized contact with a satellite television provider, and threatening his roommate with a knife. Counsel was appointed for Rudebush and the circuit court conducted a revocation hearing over two days, in January 2017 and March 2017. The circuit court heard testimony from Rudebush's roommate, Rudebush, and a contract specialist with the Department of Health Services who works with the supervised release program.

Ultimately, the circuit court found that there was clear and convincing evidence that the violations occurred, after explicitly finding the testimony of Rudebush's roommate to be more credible than Rudebush's testimony. The circuit court said:

So I will find under [WIS. STAT. §] 980.08 that rules and conditions of release have been violated and that the violation of the rules or condition[s] merits the revocation of the order granting supervised release.

I'm not aware of any alternatives to revocation[] that need to be considered here. I do think placement at the Sandridge facility is appropriate.

The written order subsequently signed by the circuit court also explicitly found that “the safety of others requires that supervised release be revoked.” *See* WIS. STAT. § 980.08(8)(b) (“If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked the court shall revoke the order for supervised release and order that the person be placed in institutional care.”).

The no-merit report addresses two issues: (1) “whether the [circuit] court properly exercised its discretion when it granted the State’s petition to revoke Mr. Rudebush’s supervised release”; and (2) whether trial counsel provided ineffective assistance. (Some capitalization omitted.) The no-merit report provides a detailed summation of the hearing testimony and discusses several issues that arose during the hearing, including a motion filed by Rudebush on the second day of the hearing challenging the circuit court’s competency. We agree with appellate counsel’s analysis and his conclusion that there would be no arguable merit to the issues addressed in the no-merit report. We will briefly discuss several issues.

First, we agree with appellate counsel’s conclusion that there was sufficient evidence to support the circuit court’s finding that Rudebush committed the rules violations. The circuit court explicitly found the testimony of Rudebush’s roommate to be more credible than the testimony of Rudebush, and testimony from the contract specialist further supported the findings. There would be no arguable merit to challenge the circuit court’s findings.

Second, we conclude that there would be no arguable merit to assert that the circuit court erred by not exploring alternatives to revocation. Neither party offered evidence of alternatives to revocation. Moreover, the circuit court's written order explicitly found that "the safety of others requires that supervised release be revoked." Having made that finding, the circuit court was required to revoke Rudebush's supervised release. *See* WIS. STAT. § 980.08(8)(b).

Third, we note that on the second day of the hearing—over two months after the petition was filed—trial counsel filed a motion to dismiss the petition on grounds that the circuit court lacked competency to proceed because the petition had not been filed within seventy-two hours of the day that Rudebush was taken into custody. The circuit court denied the motion after the State argued that the motion was not timely filed and that WIS. STAT. § 980.038(5) provides that "[f]ailure to comply with any time limit specified in this chapter does not deprive the circuit court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction." We conclude that based on that statute, there would be no arguable merit to challenge the circuit court's denial of Rudebush's motion to dismiss the petition on grounds that the circuit court lacked competency.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the order, and discharges appellate counsel of the obligation to represent Rudebush further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved from further representing Damien Rudebush in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*