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

2020AP312-CRNM State of Wisconsin v. Stephen Matthew Davis
(L.C. # 2017CF280)

Before Brash, P.J., 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).

Stephen Matthew Davis appeals from an order revoking his placement on conditional release. Davis's appellate counsel, Christopher D. Sobic, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).¹ Davis was served with a copy of the no-merit report and advised of his right to file a response, but he has

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

not done so. 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.

In November 2017, Davis was found not guilty by reason of mental disease or defect for the offense of battery by a prisoner. He was committed to the Department of Health Services and granted conditional release.

While on conditional release, Davis was subject to certain rules set forth by the Department. Those rules included a prohibition against engaging in conduct that violates statutes or ordinances or that “is not in the best interest of public welfare or your rehabilitation.” Another rule stated that Davis “shall not purchase, possess or consume any alcohol or other drugs not prescribed by your treating physician.”

In August 2018, the Department petitioned to revoke Davis’s conditional release, alleging that Davis had “sent multiple sexually explicit text messages” to his agent’s work cell phone. A report to the circuit court provided details of those text messages as well as case notes from December 2017 through August 2018. Those case notes indicated that Davis had twice tested positive for THC and admitted to his agent that he used marijuana. The notes indicated that Davis said he “smokes at work to get through the hours.”

The case proceeded to a review hearing before the circuit court, where the court heard testimony from Davis and two agents who supervised him. Davis, who was represented by counsel, was allowed to ask the witnesses questions through counsel. Davis’s agent testified that when Davis was first asked about the text messages, he speculated that he might have accidentally sent them to his agent. When Davis testified, he admitted having texted photographs of his

genitals, but he claimed that the intended recipient of the text messages was not his agent, but instead a woman who was sending him explicit photos. Davis asserted that the texts may have been sent to his agent by someone else in order “to sabotage” him. Davis also admitted that he twice tested positive for marijuana in early 2018, adding that he “was offered treatment.”

At the conclusion of the hearing, the circuit court found that Davis had sent obscene text messages and photographs to his agent, which was a violation of the rule against engaging in conduct that violated statutes and ordinances. The circuit court further found that by using marijuana, Davis violated the rule against using drugs not prescribed by his physician. In addition, the circuit court found that Davis had not cooperated with treatment recommendations and was “confrontational,” which also violated the rules of conditional release. Accordingly, the court revoked Davis’s conditional release. This appeal follows.

The no-merit report addresses whether the circuit court erred when it revoked Davis’s supervised release. Appellate counsel concludes that there would be no arguable merit to challenging the revocation of Davis’s supervised release because the circuit court found, by clear and convincing evidence, that Davis sent obscene text messages and used marijuana, thereby violating the rules of his conditional release. We agree with counsel that there would be no arguable merit to challenging the circuit court’s decision.

At a revocation of conditional release hearing, the circuit court’s findings of fact will not be overturned unless clearly erroneous. *State v. Jefferson*, 163 Wis. 2d 332, 338, 471 N.W.2d 274 (Ct. App. 1991). The court’s application of those facts to the law is reviewed *de novo*. *Id.* As a matter of law, violations of conditions are sufficient grounds for revocation. *Id.*

Here, the circuit court's findings that Davis violated multiple rules of conditional release were supported by clear and convincing evidence. Davis admitted the marijuana violations, and the circuit court implicitly rejected Davis's explanations for how the texts were sent to his agent. Both acts violated Davis's rules of conditional release. These findings, not to mention the circuit court's findings on Davis's lack of cooperation, supported the circuit court's decision to revoke Davis's conditional release. *See id.* We agree with appellate counsel that there would be no arguable merit to challenging the circuit court's decision.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Christopher D. Sobic of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Stephen Matthew Davis in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals