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**DISTRICT I**

April 20, 2021

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

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2020AP315

State of Wisconsin ex rel. Corey Woodland, v. Brian Hayes,  
Administrator, Division of Hearings and Appeals  
(L.C. # 2019CV2360)

Before Brash, P.J., Donald 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).**

Corey Woodland, *pro se*, appeals an order of the circuit court affirming the decision of the Department of Hearings and Appeals (DHA) to revoke his extended supervision. He argues that the DHA administrator, Bryan Hayes, erred in multiple ways. Based upon our review of the

briefs and the record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1) (2019-20).<sup>1</sup>

In 2007, Woodland was convicted of one count of armed robbery with threat of force, following a guilty plea. The circuit court sentenced Woodland to three years of initial confinement, followed by four years of extended supervision. The sentence was stayed and five years of probation were imposed. While on probation, Woodland was convicted of three counts of armed robbery with the threat of force, following guilty pleas. The circuit court sentenced Woodland to six years of initial confinement and four years of extended supervision on each count. The three counts were to run concurrent to each other and consecutive to Woodland's previous sentence. Woodland was incarcerated until November 2016, at which time he was released on extended supervision.

In May 2018, while Woodland was on extended supervision, the Department of Corrections (DOC) issued a violations notice alleging that Woodland committed seven violations of the terms of his release. The allegations were as follows:

1. Since on or about 4/1/18, Woodland did use marijuana.
2. On or about 5/7/18, Woodland failed to report police contact to his supervising agent.
3. On or about 5/9/18, Woodland did enter the Game Stop store at 10400 W. Silver Spring Drive, and took money without consent.
4. On or about 5/9/18, Woodland did enter the Game Stop store at 3266 S. 27th Street, and took money without consent.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

5. On or about 5/9/18, Woodland did enter an AT&T store at 1236 Miller Park Way and took money without consent.
6. Since on or about 5/1/18, Woodland did change his residence without prior consent or subsequent notification to his agent.
7. On or about 5/9/18, Woodland did possess a firearm as a felon.

A hearing was held before an Administrative Law Judge (ALJ), where the DOC sought to revoke Woodland's extended supervision. The ALJ found that Woodland admitted to the marijuana use that formed the basis for the first allegation, and that the DOC met its burden in proving allegations two, three, and five. The ALJ based her findings on video surveillance, still images identifying Woodland in the Game Stop theft, and testimony from police and Woodland's supervising agent. The ALJ found that the DOC did not meet its burden with regard to the remaining allegations. The ALJ revoked Woodland's extended supervision.

Woodland appealed the ALJ's determination to Hayes, challenging the sufficiency of the evidence presented at the hearing. Hayes affirmed the ALJ's determination. Woodland, *pro se*, then filed the certiorari action in the Milwaukee County Circuit Court that underlies this appeal. Woodland argued that (1) photographs and surveillance video that had been used to identify him at one of the robberies had not been disclosed to him or produced at the revocation hearing, in violation of his due process rights; (2) a police detective and Woodland's supervising agent allegedly gave perjured testimony at the hearing; and (3) the evidence presented at the hearing was unreliable hearsay and was not legally sufficient to support DHA's decision.

The circuit court affirmed, finding that Woodland waived his first two arguments by failing to raise them in his appeal to Hayes and that sufficient evidence supported the DHA's decision. This appeal follows.

When we review a certiorari matter, we consider the merits independent 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). In other words, we review the agency's decision, not the circuit court's decision.

Our review is limited to whether: (1) the agency stayed within its jurisdiction; (2) the agency acted according to law; (3) the agency's action was arbitrary, oppressive, or unreasonable; and (4) the agency might reasonably make the decision it did based on the evidence. *See State ex rel. Riesch v. Schwarz*, 2005 WI 11, ¶13, 278 Wis. 2d 24, 692 N.W.2d 219. This inquiry includes consideration of whether due process was afforded. *See State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43.

In our review, we defer to the determinations of DHA. *See Von Arx v. Schwarz*, 185 Wis. 2d 645, 655, 517 N.W.2d 540 (Ct. App. 1994). A certiorari court may not substitute its view of the evidence for that of DHA. *See id.* at 656. “[In an] appeal challenging a revocation decision ... the [appellant] bears the burden of proving that the decision was arbitrary and capricious.” *See id.* at 655.

On appeal, Woodland again contends that certain identification evidence was not disclosed to him, constituting a due process violation, and that the evidence relied upon by DHA was uncorroborated hearsay.<sup>2</sup> Woodland also contends that his arguments were properly preserved for appeal because his attorney objected to the use of the identification evidence at his hearing.

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<sup>2</sup> It does not appear as though Woodland is challenging the testimony of his supervising agent and the police detective who testified at his hearing. Accordingly, we do not address this issue. *See United Airlines, Inc. v. DOR*, 226 Wis. 2d 409, 411 n.1, 595 N.W.2d 49 (Ct. App. 1999) (noting that arguments not raised on appeal will not be addressed).

We conclude that Woodland’s due process argument is waived on appeal because he failed to raise the issue in his appeal to Hayes. “It is settled law that to preserve an issue for judicial review, a party must raise it before the administrative agency.” *State v. Outagamie Cnty. Bd. of Adjustment*, 2001 WI 78, ¶55, 244 Wis. 2d 613, 628 N.W.2d 376. We generally do “not consider issues beyond those properly raised before the administrative agency, and a failure to raise an issue generally constitutes a waiver of the right to raise the issue before the reviewing court.” *See id.* We see no reason to depart from this rule in this case. Although Woodland argues that his attorney objected to the evidence at issue at his hearing, the ALJ overruled the objection and Woodland did not challenge that ruling in his appeal to Hayes, thus denying Hayes the opportunity to correct any alleged error. “Judicial review of administrative agency decisions contemplates review of the record developed before the agency.” *Id.* Without a developed record on this issue, we agree that the issue has been waived.

As to Woodland’s argument that the evidence presented at his hearing was uncorroborated hearsay and therefore insufficient to revoke his extended supervision, we conclude that the totality of the evidence submitted at the hearing was sufficient for DHA to reasonably conclude that Woodland violated the terms of his extended supervision. Applying the substantial evidence test, we must affirm the DHA’s findings “if they are supported by any credible and substantial evidence in the record, even if they are contrary to the great weight and clear preponderance of the evidence.” *See Hoell v. LIRC*, 186 Wis. 2d 603, 612, 522 N.W.2d 234 (Ct. App. 1994). This court cannot substitute its judgment for that of the agency regarding “the weight or credibility of the evidence on any finding of fact.” *Currie v. DILHR*, 210 Wis. 2d 380, 387, 565 N.W.2d 253 (Ct. App. 1997). Rather, it is the function of this court to “examine

the record for credible and substantial evidence which supports the agency’s determination.”

*See id.*

In upholding the DHA determination, Hayes detailed the evidence that he relied upon in rendering his decision:

The DOC alleged that, on May 9, 2018, Woodland robbed a Game Stop store at 10400 W. Silver Spring Drive and an AT&T store at 1236 Miller Park Way. [A] Police Investigator ... viewed photos of the getaway car used at the Game Stop robbery, a new Black Nissan Sentra—4 door. [The police detective] testified that he obtained video surveillance from the Game Stop robbery and the AT&T robbery and it shows that the assailant was wearing blue latex gloves. Still shots of the robbery at the AT&T store video surveillance show the same assailant. Woodland admits that he had a black Nissan rental car on the day of the robbery. The keys to the Nissan were found at his house during the execution of a search warrant. [The detective] testified that a receipt for latex gloves (from a Dollar Tree store) was found in Woodland’s rental car. The [d]etective viewed surveillance footage from a Dollar Tree store (located in the same strip mall as the Game Stop that was robbed), and saw a person who looked like the assailant purchasing latex gloves. [Woodland’s supervising agent] testified that she viewed the surveillance video of the Game Stop robbery and recognized Woodland based upon the assailant’s jaw line and the assailant’s gait (or manner of walking).

(Record citations omitted.)

Based on Hayes’s outline of the relevant evidence, we conclude that credible and substantial evidence supports DHA’s determination.

For the foregoing reasons, we affirm.

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.

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