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DISTRICT II

May 5, 2021

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

2020AP1170

State of Wisconsin v. James Broeders (L.C. #2007CI1)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

James Broeders appeals from an order dismissing his challenge to his rules of supervision. Based upon our review of the briefs and record, we conclude at conference that this

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Because Broeders failed to exhaust his administrative remedies before filing suit, we affirm.²

In 2007, Broeders was committed to the Department of Health Services (DHS) as a sexually violent person pursuant to WIS. STAT. ch. 980. In 2015, the circuit court modified Broeders' commitment order to supervised release for Broeders to reside in the community under WIS. STAT. § 980.08(1). The supervised release plan approved by the court contained rules that the DHS requires all individuals on supervised release to follow, including one prohibiting Broeders from having "any unapproved contacts" with anyone.³

Later in 2015, Broeders signed a revised DHS list of standard rules, which continued to prohibit Broeders from having any unapproved contacts with anyone.

In 2017, the court ordered Broeders' return to a secured treatment facility for one year, the upshot of a stipulated alternative to revocation after DHS filed a petition to revoke based on alleged violation of the rules because of Broeders' unapproved contacts. In 2018, the court ordered Broeders to return to supervised release and reinstated his supervised rules of release.

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

² Broeders suggests that the court did not articulate this basis for dismissal of his complaint. To the extent that Broeders' failure to exhaust administrative remedies was not the specific basis for the circuit court's decision, this court can affirm on alternate grounds. *See State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987).

³ "An order for supervised release places the person in the custody and control of the department." WIS. STAT. § 980.08(6m). While the person is in its custody and control, DHS "shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release approved by the court under sub. (4)(g)." *Id.* "A person on supervised release is subject to the conditions set by the court and to the rules of the department." *Id.*

On March 26, 2020, Broeders filed a motion in the circuit court entitled “Motion to Modify Rules of Supervised Release Under Sec. 980.08(6m).” Broeders sought a revision to permit contact with a woman DHS declined to approve. After the court denied the motion, Broeders filed this appeal.

Broeders has failed to exhaust the administrative remedy provided in WIS. ADMIN. CODE § DHS 98.10 to seek a change in his rules of supervision. Where the Wisconsin Administrative Code has provided a remedy or grievance procedure, the person must exhaust that administrative remedy before going to court to seek judicial review. *See Nodell Inv. Corp. v. City of Glendale, Milwaukee County*, 78 Wis. 2d 416, 424, 254 N.W.2d 310 (1977) (“[J]udicial relief will be denied until the parties have exhausted their administrative remedies.”).

WISCONSIN ADMIN. CODE ch. DHS 98, entitled “Field Supervision of Clients,” “is promulgated under the authority of [WIS. STAT. §] 980.08(6m), to provide rules for supervision in communities of persons who are committed to [DHS] and placed under its control after being found ... to be sexually violent persons.” WIS. ADMIN. CODE § DHS 98.01.

It is undisputed that the administrative code provides Broeders with “an opportunity for administrative review ... through the client complaint process.” *See* WIS. ADMIN. CODE § DHS 98.10(1). The State details each of the steps and processes to obtain review of Broeders’

challenge to his rules of supervision in § DHS 98.10, beginning with a complaint filed with his or her agent, through review by the agent's supervisor, regional chief, and finally, the administrator of the Department of Corrections, Division of Probation and Parole. *See* § DHS 98.10. After a final decision from the administrator, the complainant may seek judicial review. Here, because Broeders has failed to pursue his complaint through the administrative process, the circuit court appropriately denied his complaint.⁴

Finally, we reject Broeders' suggestion that WIS. STAT. § 980.08(6m) authorizes his attempt to circumvent the administrative review process. Section 980.08(6m) provides, in relevant part, that, "[i]f the department wants to change a rule or condition of supervision imposed by the court, the department must obtain the court's approval." To the extent that a rule is imposed by the court, there is nothing in this provision that authorizes an individual on supervised release to directly seek judicial review without a final decision from the administrator.

⁴ Broeders cites to *State ex rel. Mentek v. Schwarz*, 2001 WI 32, ¶¶9-10, 242 Wis. 2d 94, 624 N.W.2d 150, in which the court noted that the rule requiring exhaustion of administrative remedies before initiating judicial proceedings is a doctrine of judicial restraint justified by good policy reasons, but that the court need not apply the doctrine under certain circumstances. To prevent premature judicial incursions into agency activities, a state agency should be given the opportunity to address the complaint, thus applying its special competence and expertise to the matter. The exhaustion doctrine also promotes judicial efficiency by allowing conflicts to be resolved at the administrative level without resort to litigation. In addition, the process of agency review may provide a court with greater clarification of the issues if a matter is not resolved before the agency. Each of these reasons is applicable here, most particularly, that the issue of whether the rules of Broeders' supervision should be modified is clearly within the special competence and expertise of the agency. We see no reason to depart from the exhaustion requirement in this case.

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 this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals