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DISTRICT II

June 23, 2021

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

2020AP614-CR State of Wisconsin v. Arthur Patton, Jr. (L.C. #2019CF1498)

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).

Arthur Patton, Jr. appeals from an order of the circuit court modifying his bail sua sponte.[1] He claims the court erred in modifying it because the court did not have the authority to

[1] This court granted leave to appeal the order. *See* WIS. STAT. RULE 809.50(3) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise stated.

do so sua sponte. 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. We affirm.

Background

Patton appeared before a court commissioner on the charges filed against him in this case, and the commissioner ordered a $750 signature bond with various conditions.

Two months later, at a status hearing, the circuit court discussed with the parties a recently returned competency report. The court explained to Patton that the report states that he was not competent but could become so if properly treated and "indicates that … you could most effectively be treated as an inpatient at a state hospital." The court informed Patton, "If everyone agrees with the doctor's report, then I'm going to order you into the care of the Department of Health Services, and they will decide whether or not to place you at a state hospital, and the doctor's recommendation is that they do." The court indicated that if the report was contested, the court would hold a hearing on the matter. Patton's counsel expressed that "Patton does not agree with the report"; the court then ordered a competency hearing.

The circuit court stated that it also "took a look at the bond" and "given what is alleged in the complaint," was "shocked at the bond," stating:

> The complaint alleges that the defendant … not only threatened members of his family and … allegedly had an electric knife that he was using to threaten others, threatened to kill a family member, and then when the police arrived, was making threatening remarks to the police and struggling with them, stated he was going to kill the officer, would not comply with the officer's orders … made several threats to kill the officers … and sexually assault the officer's dog ….

The court added: "[A]nd now I have a report from the doctor recommending an inpatient competence treatment." Due to the allegations in the complaint, Patton's "psychiatric history," and the report recommending inpatient treatment, the court ordered that Patton's bond be modified from a $750 signature bond to a $7500 cash bond. The court further stated, "In default of that, he is committed to the custody of the sheriff."

Counsel for Patton objected to the bond modification, but the court was unmoved, stating:

> I noted in the report here from Dr. Goebel that the Wisconsin Mental Health Institute hospitalization records, he has been up there nine times—most recently in 2020, and it says "prominent symptoms have included homicidal ideation." He has got threats to kill the officers in this case so I'm definitely not comfortable with the bond which was set at, as I indicated.

Patton appeals.

Discussion

Patton contends that the circuit court "lacked the authority to sua sponte increase the monetary condition" of his bond, as it did. We clarify at the outset that other than this contention, Patton does not argue that the court otherwise erroneously exercised its discretion in modifying his bail from a $750 signature bond to a $7500 cash bond. We conclude the court acted within its authority.

Whether a circuit court has the authority to act in a certain way is a question of law we review de novo. ***State v. Burris***, 2004 WI 91, ¶66, 273 Wis. 2d 294, 682 N.W.2d 812.

As support for his position, Patton directs us to WIS. STAT. § 969.02. That provision is for misdemeanors, but Patton was charged with a misdemeanor *and* a felony—Disorderly

Conduct-Domestic Abuse-Use of a Dangerous Weapon and Threat to a Law Enforcement officer, respectively—so we consider the corresponding felony provision, WIS. STAT. § 969.03. Section 969.03(3) (like § 969.02(5)), states in relevant part: "Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to [WIS. STAT. §] 969.08." Sec. 969.03(3).

Patton next directs us to subsecs. (1) and (2) of WIS. STAT. § 969.08 **Grant, reduction, increase or revocation of conditions of release**. Subsection (1) states in relevant part: "*Upon petition by the state or the defendant*, the court before which the action is pending may increase or reduce the amount of bail or may alter other conditions of release or the bail bond or grant bail if it has been previously revoked." Sec. 969.08(1) (emphasis added). Subsection (2) states: "*Violation of the conditions of release or the bail bond constitutes grounds* for the court to increase the amount of bail or otherwise alter the conditions of release or, if the alleged violation is the commission of a serious crime, revoke release under this section." Sec. 969.08(2) (emphasis added).

Based upon these statutory provisions, Patton asserts:

> For bond to be subject to modification, after the initial bond is set, either a motion must be filed by a party requesting modification or there must be a violation of the conditions of release. Patton's monetary condition of bond was increased without a motion being filed by any party or any allegation that Patton violated his bond conditions. Therefore, the court was without statutory authority to increase Patton's monetary condition of bond.

Patton, however, overlooks another key provision in WIS. STAT. § 969.08, subsection (9), which states: "This section does not limit any *other authority* of a court to revoke the release of a defendant." (Emphasis added.) Relatedly, our supreme court has pointed out the inherent

authority of a circuit court to revoke bail in the exercise of its discretion. *See* ***Beverly v. State***, 47 Wis. 2d 725, 732, 177 N.W.2d 870 (1970) ("Revocation of bail with remand to the sheriff's custody is … within the trial court's discretion."). Particularly on point to the situation in the present case, our supreme court has also stated that: "As an alternative to a complete revocation of bail, a trial judge is obliged to consider less drastic alternatives, for example, increasing the amount of the bail." ***Mulkovich v. State***, 73 Wis. 2d 464, 478, 243 N.W.2d 198 (1976). In this case, the circuit court did exactly what ***Mulkovich*** authorizes, it exercised its discretion to increase Patton's bail as an alternative to revoking it.

While Patton does not otherwise challenge the circuit court's particular exercise of its discretion in this case, we nonetheless add that the court did not erroneously exercise its discretion in increasing his bail. The court was aware of the serious charges against Patton, including threats to kill, and that the competency report stated Patton presented "prominent symptoms … includ[ing] homicidal ideation." The court also noted that the newly presented competency report recommended that Patton be subject to inpatient treatment to try to regain competency, which report Patton did not agree with. The court thus had a rational basis to be concerned about future appearances and compliance by Patton and acted reasonably in increasing his bail.

IT IS ORDERED that the order of the circuit court is hereby 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