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**DISTRICT III**

June 22, 2022

To:

Hon. Gregory B. Huber  
Circuit Court Judge  
Electronic Notice

Steven C. Kilpatrick  
Electronic Notice

Shirley Lang  
Clerk of Circuit Court  
Marathon County Courthouse  
Electronic Notice

Darrick Sangster 572278  
Winnebago Correctional Center  
P.O. Box 219  
Winnebago, WI 54985-0219

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

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2021AP328

Darrick Sangster v. Brian Hayes (L. C. No. 2020CV146)

Before Stark, P.J., Hruz and Gill, 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).**

Darrick Sangster appeals from a circuit court order that affirmed, on certiorari review, an administrative order revoking Sangster's extended 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).<sup>1</sup> We summarily affirm.

In October 2018, Sangster was released to extended supervision in four cases primarily involving drug, firearm, and bail jumping charges. In October 2019, the Department of Corrections Division of Community Corrections (the Division) notified Sangster it was

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

recommending that Sangster's extended supervision in each of the cases be revoked. The revocation summary alleged that Sangster committed two violations of his conditions of supervision: (1) he provided heroin to two people who then overdosed; and (2) he consumed marijuana.

At a revocation hearing before an administrative law judge (ALJ), Sangster admitted to having used marijuana, but he denied having delivered heroin. The ALJ then heard conflicting evidence regarding the alleged heroin violation.

Sangster's supervision agent testified that she relied upon Jacob Gould's statement and the relevant police reports in support of the heroin allegations in the revocation summary. The police reports stated that a law enforcement officer and EMS technicians, responding to a report of two people passed out in a car, administered Narcan to Gould and Derek Michalski, and then had them transported to the hospital. When a law enforcement officer questioned Gould at the hospital, Gould stated that after leaving a party where he had consumed multiple beers, he bought heroin at a Kwik Trip gas station from someone whose name he did not know. Gould subsequently changed his story and provided a written statement identifying Sangster as the person who had sold him the heroin.

Gould testified at the revocation hearing that he had run into Sangster in the parking lot outside of a Kwik Trip and bought heroin from him there. Gould said he knew Sangster from the Chippewa Valley Correctional Treatment Facility. Shortly thereafter, Gould said he drove off with a friend, and that he and the friend used and overdosed on the heroin while in the car. Gould passed out behind the wheel and did not remember much thereafter. Gould said that he

did not really recall his conversation with law enforcement at the hospital because he was just coming off of an overdose.

Sangster testified that he had been at the Kwik Trip on the night in question, but he said he had stayed in a Chevrolet Malibu while his girlfriend went into the store. Sangster denied seeing Gould at the Kwik Trip, much less selling heroin to him. Sangster asserted that Gould was lying, and that he had implicated Sangster due to bitter feelings over a woman with whom both men were sleeping. Sangster further claimed that surveillance videos from the Kwik Trip would support his version of events. Sangster's counsel also argued that Gould could be attempting to protect friends whom Gould admitted had sold him heroin in the past.

The ALJ reviewed the surveillance videos and observed that they corroborated portions of Sangster's testimony, but they were "completely consistent" with Gould's account of events even though they did not capture the actual drug transaction. The videos showed Sangster's girlfriend entering the Kwik Trip alone, as Sangster said, at about 8:46 p.m. The videos also showed the passenger side door of the Chevrolet opening and closing twice while she was in the store, indicating that someone remained in the car. After Sangster's girlfriend returned to the car at about 8:58 p.m., the Chevrolet headed toward the side of the Kwik Trip building out of the video frame, rather than toward the street. The video further showed Gould's vehicle, a Chrysler 200, arriving at the Kwik Trip at about 9:11 p.m. and parking near the side of the building. At 9:12 p.m., Gould was shown purchasing beer at the register inside the Kwik Trip. At 9:13 p.m., the Chevrolet returned into the video frame from the side of the building and exited the parking lot.

The ALJ noted that the videos were also fully consistent with the time line set forth in the police reports as to when Gould and Michalski overdosed in the Chrysler. The ALJ determined that Gould was more credible than Sangster and concluded that Sangster had committed both of the alleged violations. The ALJ revoked Sangster's extended supervision and imposed aggregate terms of three and one-half years of reconfinement.

Sangster sought review by the Administrator of the Division of Hearings and Appeals (the Administrator), who sustained the ALJ's revocation decision. Sangster next sought review of the Administrator's decision from the circuit court, which also affirmed the revocation decision. Sangster now seeks review of the revocation decision from this court.

Our review of a revocation decision is by certiorari, and it is limited to determining whether the Administrator acted: (1) within the scope of the Division's jurisdiction; (2) according to law; (3) in a non-arbitrary manner; and (4) based upon the evidence. *George v. Schwarz*, 2001 WI App 72, ¶10, 242 Wis. 2d 450, 626 N.W.2d 57. The evidentiary test on certiorari review is the "substantial evidence" test, under which we consider whether "reasonable persons could reach the same decision" as the Administrator. *State ex rel. Nudo Holdings, LLC v. Board of Rev.*, 2022 WI 17, ¶27, 401 Wis. 2d 27, 972 N.W.2d 544. The test is "[p]erhaps misnamed in view of modern parlance" because it does not pose a high bar. *Id.* We will not substitute our view of the credibility of the witnesses or the weight of the evidence for that of the Administrator, acting as fact finder. *State ex rel. Washington v. Schwarz*, 2000 WI App 235, ¶26, 239 Wis. 2d 443, 620 N.W.2d 414.

On appeal, Sangster contends the Administrator's decision was capricious and not supported by substantial evidence because: (1) the Chevrolet that arrived at 8:46 p.m. on the

surveillance video was not identical to the vehicle seen leaving at 9:13 p.m.; (2) relatedly, Sangster's presence at the Kwik Trip after 8:58 p.m. was not a fact of record; (3) Gould was at the register when the "alleged vehicle" attributed to Sangster left the parking lot at 9:13 p.m.; and (4) Gould should not have been deemed more credible than Sangster after giving contradictory statements. We are satisfied that a reasonable person could reach the same conclusions on these points as did the ALJ and the Administrator.

First, we have reviewed the still photos from the surveillance videos that Sangster contends show different vehicles, and we are satisfied that a reasonable person could conclude they are the same Chevrolet. Each of the images depicts a vehicle of the same shape and color with head and taillights in the same place. The alleged differences Sangster claims exist appear to be no more than a product of different angles and lighting. It follows that a reasonable person also could find that Sangster was still outside the Kwik Trip when Gould arrived.

Second, the fact that the Chevrolet was leaving the parking lot at the same time Gould was at the store's counter is entirely consistent with Gould having bought the heroin before he entered the Kwik Trip. A reasonable person could conclude that Sangster left immediately after the transaction had been completed in an area not covered by surveillance videos, just where Gould said it had been.

Third, it was entirely within the Administrator's authority to conclude that any discrepancies in Gould's initial statement to police were attributable to his intoxication rather than lying. We will not set aside credibility determinations on certiorari review.

In sum, the circuit court correctly determined that the Administrator acted within his jurisdiction and according to law, in a non-arbitrary manner, and based upon the evidence.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. 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*