



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 2, 2022

To:

Hon. Phillip A. Koss
Circuit Court Judge
Electronic Notice

Christopher P. August
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Nicholas DeSantis
Electronic Notice

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

2021AP1025-CR	State of Wisconsin v. Carlos A. Barrera (L.C. #2018CF613)
2021AP1026-CR	State of Wisconsin v. Carlos A. Barrera (L.C. #2019CF87)

Before Gundrum, P.J., Neubauer and Grogan, 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).

In these consolidated cases, Carlos A. Barrera appeals from judgments convicting him of first-degree sexual assault of a child and attempted second-degree sexual assault of a child. He also appeals from an order denying his postconviction motion, which challenged a condition of his extended supervision. Barrera contends that the condition, which restricts his access to the internet, represents an erroneous exercise of discretion and infringes on his constitutional rights.

Based upon our review of the briefs and records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

Barrera was convicted following guilty pleas to first-degree sexual assault of a child and attempted second-degree sexual assault of a child. He was accused of having sexual intercourse with his daughter and attempting to have sexual contact with one of her friends. An additional count of incest with a child was dismissed and read in.

At sentencing, the circuit court imposed an aggregate sentence of thirty years of initial confinement and seventeen and one-half years of extended supervision. As a condition of extended supervision, the court ordered “no internet capabilities.” On the judgments of conviction, Barrera was ordered “[n]ot to possess any device that has [i]nternet capabilities.”

Barrera filed a postconviction motion challenging the above condition. In response, the State proposed that the judgments be amended to reflect that Barrera “[s]hall not possess, use, or borrow any cell phone, data storage device or internet accessible device without agent approval and without monitoring software as approved by agent.” After a hearing on the matter, the circuit court denied Barrera’s postconviction motion and ordered the judgments amended to reflect the State’s proposed language. The court found a basis for the condition due to the defendant’s admitted use of pornography as well as the fact that the internet is a “common way to meet potential victims.” This appeal follows.

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

On appeal, Barrera renews his challenge to the condition of extended supervision restricting his access to the internet. Again, he contends that the condition represents an erroneous exercise of discretion and infringes on his constitutional rights.

It is within the circuit court's broad discretion to impose conditions of extended supervision as long as they are reasonable and appropriate. *State v. Miller*, 2005 WI App 114, ¶11, 283 Wis. 2d 465, 701 N.W.2d 47. Whether conditions are reasonable and appropriate is determined by how well they serve the dual goals of supervision: rehabilitation and protection of a state or community interest. *Id.*

Conditions of extended supervision may impinge upon constitutional rights as long as they are not overly broad and reasonably related to rehabilitation. *State v. Stewart*, 2006 WI App 67, ¶12, 291 Wis. 2d 480, 713 N.W.2d 165. "Convicted felons do not enjoy the same degree of liberty as those individuals who have not been convicted of a crime." *Id.* Whether a particular condition violates a defendant's constitutional rights is a question of law that we review de novo. *Id.*

Here, we are satisfied that the circuit court properly exercised its discretion in imposing the condition at issue. Requiring Barrera to obtain agent approval and use monitoring software to possess, use, or borrow a device capable of accessing the internet was reasonable and appropriate under the circumstances. Again, Barrera was convicted of sexually assaulting and attempting to sexually assault children. The condition at issue will eliminate one potential

avenue for him to encounter children, thereby aiding his rehabilitation and serving the community interest of keeping children safe.²

We are also satisfied that the condition does not violate Barrera's constitutional rights. The condition is not overly broad as it does not ban Barrera's access to the internet. *See State v. King*, 2020 WI App 66, ¶52, 394 Wis. 2d 431, 950 N.W.2d 891 ("requiring a supervising agent's approval of internet use is not a 'ban' on access to the internet"). Rather, it only prohibits his unfettered access. The condition is reasonably related to rehabilitation as it will assist Barrera in conforming his conduct to the law by reducing his opportunity to commit future crimes.

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order of the circuit court are 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

² Barrera, of course, did not need the internet to commit his crimes against his daughter and her friend. Presumably, he will not have the same access to children when released from initial confinement. Thus, it was reasonable for the circuit court to consider restricting his access to the internet, which he had previously used for sexual purposes.

