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**DISTRICT II**

February 15, 2023

To:

Hon. John A. Jorgensen  
Circuit Court Judge  
Electronic Notice

Kara Lynn Janson  
Electronic Notice

Tara Berry  
Clerk of Circuit Court  
Winnebago County Courthouse  
Electronic Notice

Colleen Marion  
Electronic Notice

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

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2022AP458-CR

State of Wisconsin v. Tyler A. Swanson (L.C. #2018CF576)

Before Gundrum, P.J., Grogan and Lazar, 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).**

Tyler A. Swanson appeals from an order revoking conditional release, which he argues was not requested by the appropriate authority and was not supported by sufficient evidence, and from an order authorizing involuntary medication, which he argues (and the State concedes) was not supported by sufficient evidence. 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 conclude that Swanson is correct with respect to the procedural

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

defect in the State’s petition for revocation and the lack of sufficient evidence for the order authorizing involuntary medication. We therefore reverse.

In late 2017, Swanson met a female college student at the bar where she worked in Oshkosh. He followed, harassed, and sent disturbing Facebook messages to this woman on numerous occasions from 2017 to 2018, prompting her to seek and obtain a four-year restraining order against Swanson in June 2018. After Swanson sent yet another Facebook message to the woman and followed her while she was driving in August 2018, the State charged Swanson with stalking and violation of the restraining order. Pursuant to a plea in October 2018, Swanson was found not guilty by reason of mental disease or defect (NGI) and committed to the Department of Health Services (DHS) for seven years.

After a year in institutional care, Swanson obtained conditional release in November 2019. He lived in the community for almost two years without incident under the supervision of a probation agent and a case manager. Then, in September 2021, his Department of Corrections (DOC) probation agent, Stacy Bloch, signed a “Statement of Probable Cause for Detention and Petition for Revocation of Conditional Release”—DHS Form F-25177—asserting that Swanson’s “[c]urrent mental health decompensation poses risk to himself and the community.” At the hearing on this petition, the State advised the circuit court that Swanson was accepting placement in a group home and withdrew the petition. But less than one month later, on October 11, 2021, Bloch signed a new DHS Form F-25177 seeking revocation of conditional release, stating that Swanson “[h]ad contact with his victim of his current case in which there is a no contact order.”

Swanson's victim was the first witness at the hearing on this second petition. She said that on October 10, 2021, Swanson tried calling her on Facebook Messenger in violation of his current restraining order. Next, probation agent Bloch testified. She said that she was attempting to revoke Swanson "to support the victim" and that she was concerned that Swanson posed a danger to the community because he did not want to partake in treatment or take medication for mental health issues including that he was hearing voices. Bloch confirmed that she was employed by DOC and had never been employed by DHS. The State's third and final witness was Swanson's case manager, Katie Oestreich. She testified that she believed Swanson's mental health had been declining based on her interactions with him and reports from his family and his group home; he was not sleeping, was manic, and was responding to internal stimuli. Finally, Swanson himself testified in opposition to the petition for revocation. He denied attempting to contact the victim around October 10, 2021. He also denied having any mental illness other than "possibly being a perfectionist" and stated that he didn't believe he needed to be on any medications.

The circuit court granted the State's petition to revoke conditional release. With respect to Swanson's argument that DOC employee Bloch's signature on the petition violated WIS. STAT. § 971.17(3)(e)'s requirement that DHS must initiate revocation proceedings, the court stated that it didn't "quite understand the form as well as the statute [that] defined what is a DHS representative." The court found that the term "DHS Representative" beneath the signature line on DHS Form F-25177 was "a vague term," and it was "not convinced that Ms. Bloch isn't that person." It further found that the State had met its burden to prove that Swanson "posed a significant risk of bodily harm to himself or to others or serious property damage." Finally, the

court stated sua sponte that it would “put this on the order that if he doesn’t voluntarily take medication, that he can be medicated.”

On appeal, Swanson repeats his argument that the petition, signed by DOC employee Bloch, violates WIS. STAT. § 971.17(3)(e), which authorizes the revocation of conditional release in some circumstances. We must determine whether the statute requires a DHS agent to initiate revocation, as Swanson asserts, or whether the statute authorizes a DOC agent to begin the process. Statutory interpretation presents a question of law that this court reviews de novo. *State v. Shoeder*, 2019 WI App 60, ¶6, 389 Wis. 2d 244, 936 N.W.2d 172. We begin the process by looking at the language of the statute—and if the meaning of that language is plain, that is where our inquiry stops. *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. “Statutory language is given its common, ordinary, and accepted meaning.” *Id.*, ¶45. Not only is statutory language to be “interpreted in the context in which it is used,” it is to be interpreted “reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46.

On its face, WIS. STAT. § 971.17(3)(e) states that DHS must both allege a reason that revocation of conditional release is required (to take a person into custody) and submit a statement of probable cause and petition for revocation to the committing court:

If the department of health services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The *department of health services shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays.*

(Emphasis added.) Thus, by its terms, the statute requires *DHS* to allege why conditional release should be revoked and to initiate revocation proceedings by submitting a statement and petition. The statute states that DHS “shall” take these steps to revoke an order for conditional release, which is presumed to mean the requirements of the statute are mandatory. *See Karow v. Milwaukee Cnty. Civil Serv. Comm’n*, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978).

The State correctly points out that DHS is not a person who can take these steps. The department clearly has employees, however, that can take such steps or sign documents on behalf of the entity just as assistant attorneys general are employees of the Department of Justice who can sign and submit forms on that department’s behalf. The State argues that because Bloch was charged with monitoring Swanson’s compliance with DHS’s rules—which is authorized by WIS. STAT. § 971.17(4)(e)1., giving DHS the ability to contract with other departments “to provide the treatment and services identified in the [conditional release] plan”—she must also have the authority to submit a statement of probable cause and petition for revocation as a “DHS representative,” even though she is a DOC employee.

We disagree. As stated above, context is important in construing statutory language, including context provided by the “language of surrounding or closely-related statutes.” *Kalal*, 271 Wis. 2d 633, ¶46. We disagree that the legislature’s provision for DHS to contract with DOC or “a county department ... [or] with another public agency or with a private agency” to provide treatment and services, WIS. STAT. § 971.17(4)(e)1., supports the interpretation that it has also given DOC (or any other public or private entity with which DHS has contracted) the authority to start revocation proceedings when the “department of health services” is the only entity named with the authority to do so by § 971.17(3)(e). In § 971.17(4)(e)1., the legislature explicitly gave “the county department [with which DHS has contracted], department of health

services and person to be released” the authority to “request additional time to develop the [conditional release] plan” for a committed individual; by contrast, § 971.17(3)(e) explicitly authorizes only DHS to submit the statement and petition required to initiate revocation. *See Kalal*, 271 Wis. 2d 633, ¶46 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.”).

Nor do we agree with the State that it would be absurd for DOC agent Bloch, as one of Swanson’s “boots on the ground” monitors in this case, to be unable to initiate revocation proceedings. To the contrary, it seems quite reasonable that the legislature would choose to require DHS oversight in initiating revocation proceedings when that is the department having ultimate responsibility for people committed to it after a verdict of NGI and that is the department in charge of the conditional release program. This is not to say that the “boots on the ground” DOC agents are not able to express concerns to DHS or even to request that DHS initiate revocation in proper cases. Based upon its language, we interpret WIS. STAT. § 971.17(3)(e) to require a DHS employee to initiate revocation proceedings and, therefore, we reverse the circuit court’s order granting Swanson’s revocation because the petition in this case was not signed and submitted by DHS but rather by DOC.<sup>2</sup>

Having done so, we need not reach the issue of whether the State presented evidence sufficient for the circuit court to find that Swanson had violated a rule or presented a risk to his safety or others such that conditional release should be revoked. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed). We do,

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<sup>2</sup> The State does not argue that there is a remedy for this violation other than reversal, only that there was no statutory violation.

however, address Swanson's medication order. The State does not contest that the circuit court's sua sponte order for involuntary medication was improper. A court may only issue involuntary medication orders with expert opinion that an individual is incompetent to refuse medication. WIS. STAT. §§ 971.17(3)(b) and 971.16(3). That did not happen in this case. Therefore, we also reverse the circuit court's order for Swanson's involuntary medication.

IT IS ORDERED that the orders of the circuit court are reversed. *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*