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DISTRICT I

April 18, 2023

To:

Hon. David C. Swanson
Circuit Court Judge
Electronic Notice

Michael D. Morris
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Processing
Division
Electronic Notice

Keith Love 270049
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2021AP1061

Keith Love v. Paul Kemper (L.C. # 2021CV900)

Before Brash, C.J., Donald, P.J., and White, 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).

Keith Love, *pro se*, appeals an order dismissing his complaint. 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(1) (2021-22).¹ Because Love failed to state a claim upon which relief can be granted, we affirm.

Love, an inmate, alleged that he was improperly terminated from the prison's sex offender treatment program. Following his termination from the program, Love went before the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

parole board. Love alleged that he was denied parole because he had been terminated from the program.

After attempting to challenge his termination from the sex offender treatment program administratively, Love sought relief in the federal court. That action was dismissed without prejudice, and Love filed the underlying complaint in this matter. Love claimed, as relevant for purposes of this appeal, that his termination from the program violated his due process rights.² The Respondents filed a motion to dismiss, arguing that Love had failed to exhaust his administrative remedies and, alternatively, that his complaint failed to state a claim upon which relief can be granted. The circuit court agreed that dismissal was warranted on both grounds. Love appeals.

“A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.” *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693 (citation omitted). To state a claim, a complaint “must plead facts, which if true, would entitle the plaintiff to relief.” *Id.*, ¶21. “[T]he sufficiency of a complaint depends on substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled.” *Id.*, ¶31.

The Due Process Clause does not itself provide prisoners a protected liberty interest in being granted parole. *State ex rel. Gendrich v. Litscher*, 2001 WI App 163, ¶6, 246 Wis. 2d

² While Love appeared to raise numerous claims in his complaint, on appeal, he discussed only his due process claim. Consequently, we conclude that he has abandoned any argument that his complaint properly stated other claims. See *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (“[A]n issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned.”).

814, 632 N.W.2d 878. That said, state laws establishing a parole scheme may create such a liberty interest. *Id.* “In general, Wisconsin’s parole system provides for a discretionary parole scheme and a mandatory parole scheme.” *Id.*, ¶7 (footnotes omitted). “Wisconsin’s discretionary parole scheme does not create a protectible liberty interest in parole.” *Id.*

Love’s opening brief makes clear that his claim is based upon discretionary parole. He argues that “the discretionary parole that [WIS. STAT. §]304.06(1)(b) provides Keith Love is being DENIED based on a DUE PROCESS violation[.]” Love appears to argue that he had a protected liberty interest in discretionary parole based on his belief that he would have been entitled to parole had he completed the sex offender treatment program. His argument seemingly conflates discretionary parole, in which no inmate has a protected liberty interest, with mandatory parole. See *Gendrich*, 246 Wis. 2d 814, ¶7. As discussed, no inmate is entitled to discretionary parole—even if that inmate completes treatment, such as a sex offender treatment program. While it might be relevant to a discretionary parole decision, completion of a sex offender treatment program would not automatically entitle Love to parole.

Love has not stated a claim upon which relief can be granted. Because our ruling on this issue is dispositive, we need not address whether Love exhausted his administrative remedies. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (court of appeals need not address all issues raised by the parties if one is dispositive).

IT IS ORDERED that the order is 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