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DISTRICT I

August 1, 2023

To:

Hon. Dennis Flynn
Reserve Judge

Winn S. Collins
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Dennis Schertz
Electronic Notice

George Allen Baker
5303 W. Hemlock Rd.
Milwaukee, WI 53223-4824

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

2021AP1508-NM

In re the commitment of George Allen Baker: State of
Wisconsin v. George Allen Baker (L.C. # 1997CI970005)

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

George Allen Baker appeals from an August 13, 2020 order revoking his supervised release under WIS. STAT. ch. 980 (2019-20).¹ Appellate counsel, Dennis Schertz, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Baker was advised of his right to file a response, but he has not responded. Upon this

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

court's independent review of the record, as required by *Anders*, and counsel's report, we conclude that there is no issue of arguable merit for appeal. We therefore summarily affirm the order.

In September 1997, Baker was found to be a sexually violent person pursuant to WIS. STAT. § 980.05 (1997-98). In October 2018, the circuit court approved a supervised release plan for Baker, which included an enumerated list of rules that Baker was required to follow ("SR Rules"). Baker signed the SR Rules form, and he was placed in the community in November 2018.

In July 2020, the State petitioned the circuit court to revoke Baker's supervised release due to violations of his SR Rules. Specifically, there were two incidents—in February 2020 and in July 2020—where Baker was taken into custody for aggressive behavior, including throwing items at staff, "body-check[ing]" a staff member, and forcefully slapping that staff member on the back. It was also reported that Baker had "put his hands on" his roommate in an aggressive and threatening manner. The State alleged that this behavior was in violation of the SR Rules that Baker was not to "harm or threaten to harm property, self, others, or animals"; that Baker was not to "engage or participate in any conduct ... which is not in the best interest of the public's welfare or [his] rehabilitation"; and that Baker was required to fully comply with all of his SR Rules.

At a hearing on the petition held in August 2020, testimony was heard from the staff member with whom Baker had been physically aggressive. The person who oversees Baker's treatment team, Scott Timm, also testified. Timm stated that Baker had "struggled while on supervised released to cope with anger and frustrations," and that after the incident in February

2020, he had been placed on a “behavioral plan” to assist him with anger management. However, Timm testified that Baker’s behavior was escalating, that he believed Baker was a danger to others, and that there was no alternative other than revoking his supervised release.

Baker testified as well, denying that the physical contact was violent. However, the circuit court found that the staff member’s testimony was more credible, and that Baker’s actions toward him were “unprovoked violence.” The court further found that Baker’s conduct “indicate[s] a safety risk to others[.]” Therefore, the court found that the State had met its burden of proving by clear and convincing evidence that Baker had violated his SR Rules, and ordered the revocation of his supervised release. This no-merit appeal follows.

Appellate counsel’s no-merit report first discusses whether the circuit court properly exercised its discretion when it granted the petition to revoke Baker’s supervised release. The revocation decision is discretionary and “subject to a deferential standard of review.” *State v. Burris*, 2004 WI 91, ¶45, 273 Wis. 2d 294, 682 N.W.2d 812. This discretionary decision will be upheld “if the court employs a process of reasoning based on the facts of record and reaches ‘a conclusion based on a logical rationale founded upon proper legal standards.’” *Id.* (citations omitted). The decision-making process requires not only consideration of the relevant facts, “but also requires that the decision be consonant with the purposes of the established law or other guides to discretion.” *Id.* (citation and emphasis omitted). “When supervised release is revoked on the basis of the violation of a rule or condition of release, the court should explain its decision and square that decision with the treatment-oriented purposes of the law.” *Id.*

Here, the circuit court explained that its decision was based on credible evidence that Baker had engaged in unprovoked violent conduct, contrary to his SR Rules, and that this

behavior was properly being monitored pursuant to the provisions of WIS. STAT. ch. 980. The court further credited Timm’s testimony that Baker’s violent behavior had escalated after the implementation of a behavioral plan to address his anger management issues. The court accepted Timm’s conclusion that Baker was dangerous, and that, as a result, there was no alternative to revocation. See *Burris*, 273 Wis. 2d 294, ¶40 (“the court has found that the safety of others requires the person’s commitment to a secure facility because supervised release will not be adequate”). The court’s determination was reasonable and based on an appropriate application of the law to the facts of record. We therefore agree with appellate counsel’s assessment that there would be no arguable merit to a claim that the circuit court erroneously exercised its discretion in determining that Baker’s supervised release should be revoked.

The other issue appellate counsel discusses in the no-merit report is whether Baker received constitutionally effective assistance of counsel during the revocation proceedings. The test for ineffective assistance of counsel in a WIS. STAT. ch. 980 case is the same familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and both prongs of the test—that counsel performed deficiently and that the deficiency was prejudicial—must be satisfied. See *State v. Lombard*, 2004 WI 95, ¶¶49-50, 273 Wis. 2d 538, 684 N.W.2d 103. After reviewing the record of the revocation proceedings, we are satisfied that the no-merit report properly analyzes this issue as being without merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Baker further in this appeal.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of further representation of George Allen Baker in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals