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**DISTRICT III**

September 6, 2023

To:

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Electronic Notice

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John VanderLeest  
Clerk of Circuit Court  
Brown County Courthouse  
Electronic Notice

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

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2021AP1845-CR	State of Wisconsin v. Jason A. Pristelski
2021AP1846-CR	(L. C. Nos. 2018CF533, 2019CF1182)

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).**

Jason Pristelski appeals judgments, entered upon his no-contest pleas, convicting him of possession of tetrahydrocannabinols (THC); felony bail jumping; child enticement with the intent to have sexual contact; and ten counts of possession of child pornography. Pristelski also appeals the order denying his motion for postconviction relief. Pristelski argues that the circuit court erred by declining to modify a condition of his extended supervision that prohibited Pristelski from having contact with anyone under the age of eighteen, including his daughter. Based upon our review of the briefs and records, we conclude at conference that these cases are

appropriate for summary disposition. We reject Pristelski's arguments and summarily affirm the judgments and order. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup>

In Brown County Circuit Court case No. 2018CF533, the State charged Pristelski with one count of child enticement with the intent to have sexual contact and ten counts of possessing child pornography. The charges arose from allegations that Pristelski attempted to have sexual contact with an undercover police officer whom Pristelski believed to be a fifteen-year-old girl. Following his arrest for child enticement, a consent search of Pristelski's cell phone, laptop, and iPad revealed several child pornography videos, including videos of adult men sexually assaulting prepubescent girls, including a toddler. As a condition of his cash bond in that case, Pristelski was prohibited from using the internet for peer-to-peer sites, chat rooms, Craigslist, dating sites, or "connecting sites."

In Brown County Circuit Court case No. 2019CF1182, the State charged Pristelski with possession of THC, possession of narcotic drugs, possession of a controlled substance, possession of drug paraphernalia, and six counts of felony bail jumping arising from allegations that Pristelski violated conditions of his bond by accessing the internet to visit pornography websites.

Pursuant to a global plea agreement, Pristelski agreed to enter no-contest pleas to all eleven counts in case No. 2018CF533, along with one count of felony bail jumping and possession of THC in case No. 2019CF1182. In exchange for his no-contest pleas, the State agreed to recommend that the circuit court dismiss and read in the possession of drug

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

paraphernalia count and the five remaining bail jumping counts. The State also agreed to recommend dismissing the two other drug possession counts outright. The court imposed an aggregate sentence totaling twenty-one and one-half years, consisting of ten and one-half years of initial confinement followed by eleven years of extended supervision. As one of the conditions of his extended supervision in case No. 2018CF533, the court ordered Pristelski to “have no contact with anybody under the age of 18.”

Pristelski filed a postconviction motion seeking to modify the extended supervision condition to allow contact with his daughter. In his motion, Pristelski argued that the circuit court did not have complete information regarding the custody and placement arrangements over his daughter; his prior contact with his daughter; and the fact that his daughter’s report card for the 2019-2020 school year was “positive” despite Pristelski’s pending cases and the COVID-19 pandemic. Suggesting that incomplete information was tantamount to inaccurate information, Pristelski asserted that the court might have created an exception to the condition had it known more about his relationship with his daughter. Pristelski also argued that the no-contact condition essentially terminated his parental rights without the due process afforded to parents under WIS. STAT. ch. 48, the statutes governing termination of parental rights. The court denied Pristelski’s motion after a hearing, though the court left open the possibility of revisiting the modification request if Pristelski could show the court “that he has been rehabilitated and that he is no longer a danger at least as to his child.” This appeal follows.

“Sentencing courts have wide discretion and may impose any conditions of probation or supervision that appear to be reasonable and appropriate.” *State v. Stewart*, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165; *see also* WIS. STAT. §§ 973.01(5), 973.09(1)(a). When a defendant seeks to have conditions of his or her supervision changed, the defendant bears the

burden of showing cause for the modification. See *State v. Hays*, 173 Wis. 2d 439, 448, 496 N.W.2d 645 (Ct. App. 1992) (stating that the proponent bears the burden “to establish by a clear preponderance of the evidence that there is cause to modify the terms and conditions of [supervision]”). Generally, we review a challenge to conditions of extended supervision “under the erroneous exercise of discretion standard to determine their validity and reasonableness measured by how well they serve their objectives: rehabilitation and protection of the state and community interest.” *Stewart*, 291 Wis. 2d 480, ¶11.

Although Pristelski is not challenging the circuit court’s original sentencing decision, it provides context for the court’s decision not to modify the no-contact condition. At sentencing, the court considered proper sentencing factors, including the seriousness of the offenses; Pristelski’s character; the need to protect the public; and the mitigating factors Pristelski raised. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court found the charged crimes to be “extremely serious,” especially given the graphic nature of the pornography. The court added that “the volume of the material that [Pristelski] engaged in is very concerning.” With respect to Pristelski’s character, the court determined that Pristelski was aware of the seriousness and illegality of his conduct, and “[h]e simply continued to do it.” Further, the court noted that Pristelski’s bail jumping conviction “speaks volumes on its own” and “shows a complete disregard for the law,” thus raising a question of possible recidivism.

The circuit court determined that “[t]here is clearly a need to protect the public,” acknowledging the long-term impacts to the victims of child pornography. Further, as the court noted, Pristelski did not just view and exchange child pornography—he also attempted to engage in sexual conduct with an individual whom he believed to be a fifteen-year-old girl. The record shows that the court properly exercised its sentencing discretion when imposing the no-contact

condition to protect children. Further, as the court noted when denying the postconviction motion, it was not persuaded that Pristelski's daughter should be treated differently from any other person under the age of eighteen. Ultimately, the grounds for modification proffered by Pristelski did not assuage the court's concerns or otherwise alter its conclusion that the no-contact condition, as originally imposed, remained necessary to protect the public.

Pristelski additionally argues that in denying the request to exempt his minor daughter from the no-contact condition of his extended supervision, the circuit court improperly "interject[ed] itself" into the family court's jurisdiction and, in effect, terminated Pristelski's parental rights without due process.<sup>2</sup> Pristelski provides no authority for his claim that the family court should govern conditions of extended supervision imposed within a criminal case. Further, the role of the criminal court is distinct from that of the family court. As the circuit court recognized:

The family court's consideration and role regarding physical placement and custody are totally different than the considerations I have to maintain in looking at the seriousness of a crime; the nature of the character of the defendant and the need to protect the public. The State is arguing he committed a direct violation of the court order that led to the bail jump charge and there is the need to protect the public. The family court doesn't deal with the issues, their job is to facilitate relationships interfamily. This court's job in the criminal context is wholly different, it is to address any criminal behavior and necessity for punishment and to evaluate the defendant's character for purposes of consequence and risk and enter orders protecting the public.

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<sup>2</sup> On appeal, Pristelski does not renew the claim that he was sentenced based on either incomplete or inaccurate information. We therefore deem that argument abandoned. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (issues raised before the circuit court but not raised on appeal are deemed abandoned).

We are not persuaded by Pristelski's suggestion that the family court is better suited to determine the scope of the no-contact condition.

To the extent Pristelski argues that the no-contact condition terminates his parental rights, we disagree. “Termination of parental rights’ means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.” WIS. STAT. § 48.40(2). The no-contact condition here is temporary and it does not take effect until years in the future.<sup>3</sup> Further, the no-contact condition does not permanently sever all legal rights and duties between Pristelski and his daughter. *See* WIS. STAT. § 48.43(2). Additionally, as the circuit court acknowledged, the condition could later be modified. *See* WIS. STAT. § 302.113(7m)(a). Because the no-contact condition did not permanently sever the legally recognized parent-child relationship between Pristelski and his daughter, he was not entitled to the due process protections afforded a parent in an action to terminate parental rights.

Upon the foregoing,

IT IS ORDERED that the judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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<sup>3</sup> According to Pristelski, his daughter will be around seventeen years old when he is scheduled to be released to extended supervision. Thus, the no-contact condition will apply for one year at most.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*