



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

March 13, 2013

To:

Hon. Robert J. Wirtz
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Eric Toney
District Attorney
Fond du Lac County
160 South Macy Street
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Susan E. Alesia
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Tyler J. Barba
Winnebago Mental Health Institution
P.O. Box 9
Winnebago, WI 54985-0009

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

2012AP1914-CRNM State of Wisconsin v. Tyler J. Barba (L.C. # 2010CF295)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Tyler J. Barba appeals from an order revoking his placement on conditional release. Barba's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Barba filed a response. After reviewing the record, counsel's no-merit report, and Barba's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order. *See* RULE 809.21.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

In 2011, Barba was found not guilty by reason of mental disease or defect for the offense of burglary. He was committed to the Department of Health and Social Services and granted conditional release.

While on conditional release, Barba was subject to certain rules set forth by the department. The first rule was “You shall avoid all conduct which is in violation of federal or state statute, municipal or county ordinances or which is not in the best interest of public welfare or your rehabilitation.”

In 2012, the department petitioned to revoke Barba’s conditional release, alleging a violation of the first rule. The case proceeded to a review hearing where the circuit court found that such a violation had occurred. Accordingly, the court revoked Barba’s conditional release. This appeal follows.

The no-merit report addresses whether the State proved by clear and convincing evidence that Barba violated a rule of his conditional release.

At a revocation of conditional release hearing, the circuit court’s findings of fact will not be overturned unless clearly erroneous. *State v. Jefferson*, 163 Wis. 2d 332, 338, 471 N.W.2d 274 (Ct. App. 1991). The court’s application of those facts to the law is reviewed de novo. *Id.* As a matter of law, violations of conditions are sufficient grounds for revocation. *Id.*

Here, the circuit court found that Barba had refused to take his medication. This finding was supported by the testimony of Barba’s mother, who lived with him. Because the refusal to take medication is clearly a violation of the rule that Barba avoid conduct that “is not in the best

interest of public welfare or [his] rehabilitation,” we agree with counsel that the State met its burden of proof.

As noted, Barba filed a response to counsel’s no-merit report. In it, he challenges the circuit court’s finding that he refused to take his medication. According to Barba, he stopped taking his medication in July 2011 because his psychiatrist, Dr. Whelan, discontinued it and agreed to let Barba live in the community without it. The problem with Barba’s account is that it was discredited by a January 30, 2012 letter to the court from Nikki Hoerth, an agent at the department of corrections. That letter provides a summary of Barba’s placement and states in a December 30, 2011 entry: “Dr. Whelan called me back and left a voice message letting me know that Tyler has been extremely uncooperative with medications and outright refused to take them when he met with him in July. Tyler had told [another case manager] that Dr. Whelan discontinued his medications because he was doing fine without them, but I guess this wasn’t the case.” The court relied on this letter in its decision to revoke Barba’s placement. Accordingly, we are satisfied that Barba’s response does not present an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Susan E. Alesia of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved of further representation of Barba in this matter.

Diane M. Fremgen
Clerk of Court of Appeals