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DISTRICT IV

March 22, 2016

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

2015AP990-CR

State of Wisconsin v. Corey L. Buckholtz (L.C. # 2014CF96)

Before Kloppenburg, P.J., Higginbotham, and Blanchard, JJ.

Corey Buckholtz appeals a judgment convicting him of two counts of failure to pay child support, and an order that denied the primary relief he had requested in a motion to set aside a condition of his probation. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm for the reasons discussed below.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

As modified in response to Buckholtz's postconviction motion, the challenged condition of probation states that Buckholtz "can only leave the State of Wisconsin with prior agent approval, his time outside Wisconsin cannot exceed 2 weeks at a time, and his time outside Wisconsin cannot exceed 8 weeks in 1 year." Buckholtz contends that the condition presents an overly broad infringement upon his constitutional rights of travel and association.

By statute, Wisconsin courts are authorized to impose any conditions of probation that "appear to be reasonable and appropriate." WIS. STAT. § 973.09(1)(a). However, when a condition of probation infringes upon a constitutional right, it must be reasonably related to the defendant's rehabilitative needs, and not overly broad. *State v. Stewart*, 2006 WI App 67, ¶12, 291 Wis. 2d 480, 713 N.W.2d 165. This court will independently review whether a defendant's constitutional rights have been violated, and will analyze geographic limitations on a case-by-case basis, taking into account the totality of the circumstances. *Id.*, ¶¶12-13.

Although the State contests the point, we will assume without deciding that a defendant on probation has, at least to some degree, the constitutional rights to travel and to associate with family members living out of state.

As to the facts and circumstances of this case, Buckholtz had paid less than \$1,000 in child support over a period of eleven years. The circuit court made a factual finding that Buckholtz's decision to reside in Minnesota was motivated by a desire to avoid meeting his child support obligations in Wisconsin. The circuit court explained that it was imposing the geographic restriction in order to give Wisconsin's Department of Corrections and child support agencies sufficient ability to directly monitor Buckholtz. The court indicated that eight weeks a

year, as permitted by prior agent approval, should be sufficient time for Buckholtz to attend to family matters in Minnesota.

Given the court's findings regarding Buckholtz's abysmal record of payment and need for close supervision, and its reasonable allowance for the potential for Buckholtz to visit out-of-state family on an extended basis, we are satisfied that the condition of probation imposed here was reasonably related to Buckholtz's rehabilitative needs and sufficiently tailored to survive constitutional scrutiny.

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals