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DISTRICT III

October 4, 2016

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

2015AP1959-CR State of Wisconsin v. Anthony C. Welch (L. C. No. 2008CF76)

Before Stark, P.J., Hruz and Seidl, JJ.

Anthony Welch appeals an amended judgment of conviction partially rejecting his request to modify the conditions of his extended supervision. The amended judgment prohibits Welch from using a non-work computer except as allowed by his probation and parole agent. Welch contends the restriction is overly broad and a greater deprivation of liberty than is reasonably necessary, and the restriction violates his First Amendment rights. Upon our review of the parties' briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14). The judgment is summarily affirmed.

Welch was charged with sexual assault of a child under the age of thirteen, sexual assault of a child under the age of twelve, and exposing a child to harmful material. The complaint alleged Welch admitted that he and the victim watched pornography on a computer causing Welch to become "excited," leading to sexual contact with the victim. Pursuant to a plea agreement, Welch entered a guilty plea to one count of sexual assault of a child under the age of thirteen, and the other charges were dismissed and read in for sentencing purposes. At the plea hearing, the assistant district attorney also indicated a computer was seized from Welch that may have had contraband photographs, and the State agreed not to charge Welch with any offense regarding the contraband. The circuit court accepted the guilty plea and imposed a sentence of five years' initial confinement and five years' extended supervision. A condition of the extended supervision provided, "No computer use outside employment." At the sentencing hearing, the court explained:

> The no computer use outside of work or job training, because computers are such an effective way, first of all, to fall into pornography, which is a problem for sexual offenders, and then, secondly, to recruit and meet young people. They have been very effective, apparently, in regards to that, so I've got to restrict him on those kinds of matters.

After Welch began his extended supervision, he wrote the circuit court two letters seeking an amendment to the non-work-computer prohibition. Welch wrote, "I would like to get this changed to say nothing or that I may use a computer that has a monitoring program on it that is controlled by probation agent." He stated he wanted to enroll in college and needed computer access for that purpose. In a follow-up letter, Welch directed the court's attention to ***United States v. Freeman***, 316 F.3d 386 (3d Cir. 2003), which he contended would support his claim that prohibiting computer service without written approval of the probation officer is overly

broad and involves a greater deprivation of liberty than is reasonably necessary to deter future criminal conduct and protect the public. After conducting a hearing on the request, the circuit court amended the judgment of conviction by adding the provision, "Non-work computer usage as allowed by the P&P Agent."

We affirm the amended judgment for several reasons. First, the conditions of supervision are committed to the circuit court's discretion. ***State v. Stewart***, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165. Welch has not provided this court with a transcript of the hearing. This court will assume the missing transcript supports the circuit court's discretionary decision. ***Austin v. Ford Motor Co.***, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

Second, the federal cases Welch cites do not apply.[1] They are based on 18 U.S.C. §§ 3553 and 3583. The federal sentencing statues apply to federal cases. The Wisconsin counterpart, WIS. STAT. § 973.01(5) (2013-14), allows the sentencing court to impose conditions of supervision that further the goals of rehabilitation and protection of the public. A condition of extended supervision need not directly relate to the offense for which a defendant is convicted. ***State v. Miller***, 2005 WI App 114, ¶13, 283 Wis. 2d 465, 701 N.W.2d 47. The court may impose conditions that prevent a defendant from getting into situations that may lead to further criminal conduct. ***State v. Simonetto***, 2000 WI App 17, ¶8, 232 Wis. 2d 315, 606 N.W.2d 275.

[1] On appeal, Welch also cites ***United States v. Baker***, 755 F.3d 515 (7th Cir. 2014), and ***United States v. Holm***, 326 F.3d 872 (7th Cir. 2003), which impose restrictions similar to those stated in ***United States v. Freeman***, 316 F.3d 386 (3d Cir. 2003), on federal courts imposing conditions of supervised release under the applicable federal statutes.

Third, the restriction on Welch's computer use is sufficiently related to his crime. He and the victim viewed pornography on the computer just before the sexual contact, suggesting it was a catalyst for the sexual assault. Welch's statement to police indicated he was "excited" from watching the pornography, suggesting it motivated his criminal activity. In addition, the court could reasonably impose conditions of supervision that relate to the read-in offenses, which included exposing a minor to harmful material. Giving Welch's probation and parole agent control over Welch's non-work computer access is not an overly broad restriction on Welch's constitutional rights.

Finally, Welch's argument that the restriction violates his First Amendment rights fails for several reasons. First, that argument was not specifically made in his motion in the circuit court. An argument cannot be raised for the first time on appeal. ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997). Second, the argument is not adequately developed. The argument is not supported by reference to legal authority. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646 492 N.W.2d 633 (Ct. App. 1992). Welch does not address the principle that supervised release justifies restrictions on the constitutional rights enjoyed by citizens not serving a sentence for a crime. *See* ***State v. Purtell***, 2014 WI 101, ¶23, 358 Wis. 2d 212, 851 N.W.2d 417.

IT IS ORDERED that the judgment is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals