

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 21, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2679-CR

Cir. Ct. No. 2008CM1747

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LATHADIS L. LUCKETT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Lathadis L. Luckett appeals from a judgment of conviction for obstructing an officer, as a repeater, and from a postconviction order affirming the conditions imposed on Luckett while on extended supervision. Luckett contends that the conditions imposed by the circuit court are unreasonable and unconstitutionally overbroad, and that the circuit court’s denial of Luckett’s request to reside with a woman imposed an additional condition without a hearing. We disagree and affirm.

BACKGROUND

¶2 On January 21, 2009, Luckett pled guilty and was convicted of obstructing an officer. Luckett was charged as a repeater based upon prior convictions for battery, disorderly conduct, and bail jumping. The current conviction stemmed from an incident during which the police were called to a Kenosha county residence for a domestic dispute. The dispute occurred between Luckett and Stephanie V. while Stephanie’s child was present. It was the child who called police when an argument between Luckett and Stephanie became heated. When the officers arrived, Luckett ran. When confronted outside the residence, Luckett attempted to punch one of the officers in the face.

¶3 On March 3, the court sentenced Luckett to one year of initial confinement followed by one year of extended supervision. The court set conditions for Luckett’s extended supervision, including these restrictions: “Do not reside with any person in any place in which children or women reside

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[without] Court’s permission. May not have contact with Stephanie V. or her children.”

¶4 On September, 14, 2009, Luckett filed a motion for postconviction relief wherein he sought revision of the two conditions of extended supervision mentioned above. He argued that the conditions were not reasonable or appropriate; specifically, he asserted that the conditions were unconstitutionally overbroad and without a proper nexus to the offense. The circuit court denied the motion.

¶5 Luckett appeals from the judgment, which incorporates the extended supervision conditions that he not reside where women or minor children reside and that he have no contact with Stephanie V. or her children, and from the order denying his motion to remove those conditions.²

DISCUSSION

¶6 Luckett offers three arguments to support his challenge of the extended supervision conditions. He asserts that (1) the conditions are neither reasonable nor appropriate, (2) the conditions are unconstitutionally overbroad, and (3) the circuit court’s denial of Luckett’s request to reside with a woman added a new condition not imposed at sentencing.

² Although Luckett challenges two conditions of his extended supervision, the restriction on residing with women or children and the requirement that he have no contact with Stephanie V. or her children, his arguments focus almost exclusively on the first condition. Our discussion of the appellate issues will likewise focus on the condition that Luckett not reside with a woman or child without the court’s permission.

¶7 We begin with the reasonableness of the conditions. WISCONSIN STAT. § 973.01(5) provides that a circuit court “may impose conditions upon [a] term of extended supervision.” It is within the court’s discretion to impose conditions, providing the conditions are reasonable and appropriate. See *State v. Nienhardt*, 196 Wis. 2d 161, 167, 537 N.W.2d 123 (Ct. App. 1995). “Whether a condition of extended supervision is reasonable and appropriate is determined by how well it serves the dual goals of supervision: rehabilitation of the defendant and the protection of a state and community interest.” *State v. Miller*, 2005 WI App 114, ¶11, 283 Wis. 2d 465, 701 N.W.2d 47.

¶8 Luckett contends that the first condition, that he not reside with women or children without the court’s permission, is unreasonable because his crime of obstructing an officer did not involve women or children and thus the condition is unrelated to the offense. He asserts that he “does not have a long history of violence in general.” He further argues that it is inappropriate to “deny [him] the ability to live with his mother, aunt, cousin or other family member.”

¶9 We are not persuaded. “[A] condition of extended supervision need not directly relate to the offense for which the defendant is convicted as long as the condition is reasonably related to the dual purposes of extended supervision.” *Id.*, ¶13. Conditions of extended supervision are appropriate where the defendant needs to be rehabilitated from related conduct. See *id.*, ¶12. Here, the obstruction charge stemmed from a call made by Stephanie V.’s child about an argument between Stephanie and Luckett. As the State points out, Luckett was arrested when he ran from the scene and the obstructing charge arose from “the same transactional group of facts” that initiated the call to police.

¶10 Furthermore, the circuit court observed that:

Mr. Lockett's prior history involved domestic violence against the same woman with whom he was "fighting" on this occasion, and in the presence of the same innocent child who was forced into the position of calling the police during this "fight." Mr. Lockett is a convicted drug dealer and accessory to murder. He has an extensive history of other crimes, and there were allegations in his last domestic violence case that he had also battered the same child who was present in this case.

The court properly considered Lockett's criminal history when crafting the conditions of extended supervision. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984).

¶11 Lockett also mischaracterizes the extent of the condition's restriction. The circuit court did not bar Lockett from living with his mother, his aunt, or any other female family member. Rather, it required Lockett to obtain permission from the court before doing so. The first condition of extended supervision was appropriate. The circuit court's focus was clearly on the protection of community interests, which is a valid factor in crafting conditions of extended supervision. *See State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499.

¶12 Lockett next argues that the condition is unconstitutionally overbroad. Conditions of extended supervision may impinge upon constitutional rights so long as they are not overly broad and are reasonably related to the defendant's rehabilitative needs. *See Nienhardt*, 196 Wis. 2d at 168. We review the constitutionality of a condition of extended supervision de novo. *See State v. Lo*, 228 Wis. 2d 531, 534, 599 N.W.2d 659 (1999).

¶13 Lockett asserts that the condition of extended supervision “is overly broad because it inhibits [him] from residing with [a] woman or children without the court’s permission and it prohibits [him] from exercising his protected freedom of association which the state should not be able to regulate.” The circuit court did not prevent Lockett from living with a woman or child; rather, it required him to obtain the court’s permission first. With regard to his claim that the condition has no nexus to the offense and serves no rehabilitative purpose, we reject that argument outright. The offense of obstructing arose from a domestic call for assistance, and Lockett’s criminal record demonstrates domestic violence problems in his past.

¶14 Lockett’s constitutional argument is reminiscent of those arguments we have already considered and rejected. He has failed to point to any authority that gives him the right, as a person with a history of domestic violence, to reside with women and children. We need not consider arguments that are undeveloped or unsupported by citations to relevant authority. *See State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994). Nonetheless, we reject the argument on its merits. The conditions of supervision reflect the circuit court’s concern for women and children in the community, provide an opportunity for Lockett to overcome the condition by applying for permission, and address Lockett’s need to overcome his violent behavior. In this context, the conditions imposed are not overbroad and do not impinge on Lockett’s constitutional freedoms.

¶15 Finally, Lockett argues that the court improperly added post-sentencing conditions to his extended supervision. When Lockett sought permission to reside with a woman and her children, not Stephanie V., the court advised Lockett that it would consider granting him permission if Lockett provided a statement from a qualified therapist that: (1) the therapist was familiar

with Lockett's criminal history, including the complaints behind the convictions; (2) the therapist personally spoke to the woman and her children; and (3) the therapist believed that it would be "safe" for the woman and the children if Lockett resided with them. Lockett challenges the court's authority to add a condition to the extended supervision after sentencing without a hearing.

¶16 We reject Lockett's characterization of the court's response to his request as adding a condition to his extended supervision. The original condition required Lockett to seek permission before making certain living arrangements. As stated above, the court imposed this condition to protect the community. When the court required Lockett to submit an expert opinion that Lockett's proposed cohabitants would be safe, the court was seeking information that would allow it to make a reasoned decision rather than an arbitrary one.

¶17 Lockett notes that his department of corrections agent in the community had visited the proposed residence and determined that it would be an appropriate living arrangement; therefore, he asserts, the court should have been satisfied and granted permission. The court was not satisfied with the agent's determination, and explained that the agent had "not shown that [his or her] judgment will satisfactorily guarantee the protection which the court deems necessary." The court set forth several paragraphs explaining its reasoning, and we ascertain nothing to demonstrate that the court went beyond the parameters attendant to the original sentencing conditions.

¶18 We conclude that the circuit court placed reasonable and appropriate conditions on Lockett's period of extended supervision. The court provided a sentencing rationale based on the protection of the public given Lockett's criminal history. Nothing in the record persuades us that an error occurred.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

