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DISTRICT IV

July 23, 2026

To:

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Circuit Court Judge
Electronic Notice

Colin Thomas Roth
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Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
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Joshua Weishaar
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You are hereby notified that the Court has entered the following opinion and order:

2024AP2467

State of Wisconsin ex rel. Bret James v. Brian Hayes
(L.C. # 2024CV861)

Before Graham, P.J., Kloppenburg, and Nashold, 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).

Bret James appeals a circuit court order that affirmed, on certiorari review, an order issued by the Administrator of the Division of Hearings and Appeals (the Administrator) that revoked his extended supervision. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2023-24).¹ As James acknowledges, this court is bound by controlling precedent to reject his argument that the Administrator violated his right to procedural due process. We also reject

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

James's argument that the Administrator's decision was not supported by substantial evidence. Accordingly, we summarily affirm.

James was convicted in 2019 for false imprisonment. His extended supervision was revoked in 2020 after James committed domestic violence against A.B.² After James was released to extended supervision from confinement associated with that revocation, DOC again instituted revocation proceedings in November 2023. These proceedings were based on allegations that James moved in with A.B. without his supervision agent's permission and that, "on or about" October 8, 2023, James violently harmed A.B., punching and strangling her while she was holding one of the young children she shares with James.

At the December 2023 revocation hearing before an administrative law judge (ALJ), James stipulated to the violation of moving in with A.B. without agent approval. The ALJ then heard testimony from multiple witnesses about the October 2023 incident in which James allegedly punched and strangled A.B. We recount the testimony in greater detail below, but in summary, A.B. had provided multiple differing accounts of when the incident occurred, and the precise chronology of events was difficult to pin down from the testimony.

The ALJ concluded that DOC did not prove by a preponderance of the evidence that James committed domestic abuse. Writing that the evidentiary record "was difficult to assess," the ALJ determined that A.B.'s statements were "insufficiently reliable to support the allegations," and that revocation was not appropriate.

² To protect the privacy of the victim, we refer to the victim using initials that do not correspond to her real name. See WIS. STAT. RULE 809.86.

DOC appealed the ALJ’s revocation decision to the Administrator, who reversed the ALJ’s decision. The Administrator concluded that the evidence showed it was “more likely than not that James assaulted [A.B.] between October 3 and October 6, [2023] which is fairly encapsulated by the ‘on or about’ October 8 date listed in the allegation.” Although the Administrator noted that A.B. was “not a perfect witness” and that she was “obviously confused about the date of the assault when she was interviewed by [a] police officer on October 12,” her injuries—which had been observed twice by the officer—“were perfectly consistent with being grabbed in the neck and punched in the face as she described.”

James then sought review of the Administrator’s decision from the circuit court, which affirmed the decision. James now seeks review from this court.

Our review of a revocation decision is by certiorari, and it is a review of the Administrator’s decision rather than that of the ALJ or the circuit court. ***George v. Schwarz***, 2001 WI App 72, ¶10, 242 Wis. 2d 450, 626 N.W.2d 57. We are limited to determining whether the Administrator acted: (1) within the scope of his jurisdiction; (2) according to law; (3) in a non-arbitrary manner; and (4) based on the evidence. ***Id.***

First, James argues that due process required the Administrator to confer with the ALJ regarding witness credibility before reversing the ALJ’s decision. Such conferral is required in various administrative actions affecting property or employment when a decisionmaker overturns an initial hearing examiner’s decision on witness credibility grounds. See, e.g., ***Appleton v. DILHR***, 67 Wis. 2d 162, 172, 226 N.W.2d 497 (1975); ***Transamerica Ins. Co. v. DILHR***, 54 Wis. 2d 272, 284-85, 195 N.W.2d 656 (1972). However, as James acknowledges, even though conferral is required in other administrative proceedings, conferral is not required in revocation

proceedings under our case law. See *State ex rel. Eckmann v. DHSS*, 114 Wis. 2d 35, 40-41, 337 N.W.2d 840 (Ct. App. 1983) (explaining that in *Ramaker v. State*, 73 Wis. 2d 563, 243 N.W.2d 534 (1976), our supreme court ruled that reversing a hearing examiner does not require the reviewing authority to confer with the hearing examiner about demeanor evidence or witness credibility in probation revocation proceedings). James does not argue that *Eckmann* and *Ramaker* are distinguishable on the ground that they addressed revocation of probation as opposed to extended supervision, and the parties agree that we are bound by these precedents to reject James’s due process argument.

James asks this court to certify this case to the Wisconsin Supreme Court to revisit the case law on this issue. However, we note that James filed a petition to bypass this court on May 12, 2005, and that the petition was denied by our supreme court on April 22, 2026. We are not persuaded that certification is appropriate.

The second issue that James raises on appeal is whether the Administrator’s decision was “based upon the evidence.” See *George*, 242 Wis. 2d 450, ¶10. The evidentiary test on certiorari review is the “substantial evidence” test, under which we consider whether “reasonable persons could reach the same decision” as the Administrator. *State ex rel. Nudo Holdings, LLC v. Board of Rev.*, 2022 WI 17, ¶27, 401 Wis. 2d 27, 972 N.W.2d 544. We will not substitute our view of the credibility of the witnesses or the weight of the evidence for that of the Administrator, acting as factfinder. *State ex rel. Washington v. Schwarz*, 2000 WI App 235, ¶26, 239 Wis. 2d 443, 620 N.W.2d 414.

We first summarize the testimony at the revocation hearing, and we then address James's argument that A.B.'s version of events is "chronologically impossible" such that no reasonable decisionmaker could have believed her testimony.

The witnesses at the hearing included A.B.; a police officer who interacted with A.B. on several occasions during October 2023; James's supervision agent; James's sister; and James. A.B. testified as follows. The incident in which James injured her took place on "the 3rd or 4th of October." She and James argued because James "wanted to go back to Madison," which "put [her] in a really rough situation" because she did not have daycare for the children. James had "kind of had his stuff packed up by the door," and A.B. was "pushing [James's things] ... towards the door to leave [the] apartment." A.B. said that she asked her stepfather "to help escort [James] out of [her] house" while she was at the laundromat because she "didn't feel comfortable." A.B.'s stepfather submitted a written statement that James "wailed on" A.B. and that "[s]he didn't come out to [the stepfather's] place later that night because [James] wouldn't leave so [the stepfather] headed over ... to relieve him of his burden." Although A.B. did not know the exact date that James left her apartment in La Crosse, she testified that it was before October 12, a date on which A.B. "knew he had an appointment with his PO officer" in Madison.

A.B. further testified that she took photos of her injuries immediately after the incident, but waited to report it until October 12, 2023, because James was "still in [her] house" before then. A.B. recalled that she had also had a conversation with Officer Jorrey Olson on October 6, but she did not recall telling the officer that no altercation between A.B. and James took place on that day.

Officer Olson testified as follows. He conducted a welfare check on A.B. at her apartment on October 6, 2023, and observed that she had a black eye that appeared to be healing. According to Olson's report, A.B. denied that there was any domestic violence on October 6.

On October 12, when Olson interviewed A.B. after she reported the incident, he noticed that the black eye was healing further. A.B. "was somewhat confused and conflicted" about when her injuries were sustained. She showed Olson photos that were timestamped with a date of October 3, and the injuries looked "very fresh" in these photos, but she told Olson that she was injured on October 8. A.B. was "very emotional and very ... erratic" during the October 12 interview, causing Olson to question whether she was under the influence of a substance or suffering from mental illness. A.B. also told Olson about a history of domestic violence with her mother and spent the first 10-15 minutes of the interview discussing problems with her mother rather than James. A.B. claimed that her mother had been stealing from her and "hacking her phone," and, when asked about the inconsistencies between the October 3 date on the photos and the October 8 date when A.B. said the abuse occurred, A.B. claimed that her mother had changed the timestamps on the photos.

James's supervising agent testified that A.B. sent her photographs of her injuries on October 12 or 13, 2023, and told her the incident had happened on October 8. DOC also introduced an incident report from an investigating officer who interviewed A.B. on October 26, 2023. According to the report, A.B. told the officer that she denied domestic abuse during Olson's October 6 visit because she was afraid of retaliation from James, who was still inside her apartment at the time, and that she reported the incident on October 12 because James had left and she "finally felt safe."

James's sister testified that he came to stay with her in Madison on October 7, 2023, and that she found an Uber receipt on James's phone reflecting his travel from A.B.'s home in La Crosse to Madison on that day.

Finally, James testified on his own behalf regarding A.B.'s possible motivations. He said that A.B. "could snap and call and accuse [him] of doing anything, which she has done in the past," when he "would stand in the way of her using drugs." According to James, A.B. knew that "she would be able to call and get [him] locked up" if he "didn't do what she wanted" him to do. He further testified that he had reported A.B.'s drug use to Child Protective Services on September 17th, and "that's when she got upset and irate." James testified that he saw A.B. with injuries on her face, but he did not know how she got them; he denied causing any sort of bodily harm to A.B.

As noted, although the ALJ determined that A.B.'s testimony was "insufficiently reliable to support the allegations," the Administrator credited A.B.'s account and concluded that the evidence showed it was "more likely than not that James assaulted [A.B.] between October 3 and October 6."

James's argument that A.B.'s version of events is "chronologically impossible" is based on the premise that "statements from [A.B.] and her stepfather ... show a clear and consistent story that the attack and Mr. James's departure happened on the same day." Since it is undisputed that James did not leave La Crosse for Madison until October 7, and the evidence is clear that A.B. was injured before that day, James argues that the Administrator's conclusion that he was responsible for A.B.'s injuries is unreasonable. James admits that "[A.B.] did not say the exact words that Mr. James moved out the same day as the alleged attack," but asserts that it

“simply doesn’t make sense” that he would have been packing his things on October 3 when the assault allegedly occurred, but that he did not actually leave La Crosse until October 7.

As the Administrator noted, A.B. testified at the revocation hearing that James assaulted her on “the 3rd or 4th of October.” The Administrator also cited Officer Olson’s observation of A.B.’s healing facial injuries on October 6, the photos of the fresh injuries that were timestamped October 3, and the fact that A.B. “did not waver on how James assaulted her causing her injuries,” even if she was “obviously confused about the date of the assault” during her interview on October 12. Thus, the Administrator’s conclusion that James injured A.B. is supported by credible evidence of a plausible timeline of events: James assaulted A.B. “most likely on October 3, 2023,” when they were arguing about his plans to leave for Madison. A.B. took photos of those injuries the same day. On October 6, Olson saw the healing injuries, but A.B. denied that domestic violence occurred out of fear because James was still in her apartment. On October 7, James left for Madison. On October 12, A.B. finally reported the assault because she felt safe enough to do so knowing that James was in Madison for his appointment with his supervising officer on that day.

James’s inferences from the evidence—including that “the alleged attack and [his] departure happened in short order” and that A.B.’s mother could have been responsible for her injuries—might be a reasonable alternative hypothesis. But this court is not permitted to substitute its view (or James’s view) of the evidence for the Administrator’s. *Washington*, 239 Wis.2d 443, ¶26. Where there is “relevant, credible, probative” evidence to support the Administrator’s conclusion, we must affirm. See *Von Arx v. Schwarz*, 185 Wis.2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994).

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals