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DISTRICT IV

August 20, 2026

To:

Hon. Rhonda L. Lanford
Circuit Court Judge
Electronic Notice

Lynn Kristine Lodahl
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Glenn Smiley
5614 State Rd. 11, Trailer 21E
Elkhorn, WI 53121

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

2024AP1294

Glenn Smiley v. Lance Wiersma (L.C. # 2023CV109)

Before Graham, P.J., Blanchard, 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).

Glenn Smiley, pro se, appeals a circuit court order that affirmed a decision of the Department of Corrections (DOC) on certiorari review. Based upon 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 We summarily affirm.

Smiley was convicted of repeated sexual assault of a child and was sentenced to prison. The sentencing court ordered Smiley to have no unsupervised contact with children. Smiley completed the initial confinement portion of his sentence and was released to extended

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

supervision in July 2016. The rules of Smiley's extended supervision set by the DOC include the following, which we will call "the dating rule": "You shall not establish, pursue, nor maintain any dating, romantic, or sexual relationship without prior agent approval."

Smiley asked the DOC to strike the dating rule from his rules of supervision. The DOC assistant regional chief denied that request, explaining that the reason for the dating rule is to allow Smiley's supervision agent to determine whether any person Smiley intends to have a romantic relationship with has minor children or access to minor children, and also to confirm that the person understands the rules of Smiley's supervision. The assistant regional chief explained that the DOC is obligated to ensure that Smiley follows the sentencing court's order not to have unsupervised contact with children, and that one way to accomplish that is to require Smiley to discuss any potential dating relationship with his agent. The reviewing DOC administrator agreed with that reasoning and also explained that it is the agent's responsibility to monitor who Smiley has contact with and to ensure that the rules of supervision and the sentencing court's orders are followed. The administrator explained that the dating rule is a standard rule for those under sex offender supervision and is necessary to monitor the conditions of supervision.

Smiley sought certiorari review in the circuit court. The circuit court affirmed the DOC's decision. Smiley appeals.

On appeal, this court reviews "the agency's decision, not the decision of the circuit court." *Bratcher v. Housing Auth. of Milwaukee*, 2010 WI App 97, ¶10, 327 Wis. 2d 183, 787 N.W.2d 418. Our review is limited to: "(1) whether the agency stayed within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable, representing its will, not its judgment; and (4) whether the evidence was such that

it might reasonably make the order or determination in question.” *State ex rel. Riesch v. Schwarz*, 2005 WI 11, ¶13, 278 Wis. 2d 24, 692 N.W.2d 219 (quoted source omitted).

Smiley contends that the DOC decision is arbitrary and unreasonable. He concedes that his supervision agent has a responsibility to *monitor* his contacts. However, he argues that the requirement that his agent *approve* any dating relationship is more onerous. Smiley argues that requiring him to obtain agent approval for any dating relationship regardless of whether that person has children, but not requiring approval regarding other persons in his life who have children, is arbitrary. He contends that the requirement for agent approval of any dating partner and notification to that person of his rules of supervision lacks a nexus to his conviction and is therefore unreasonable and overbroad. Controlling precedent by this court requires us to reject these positions. *See Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (only the supreme court may overrule a prior decision of the court of appeals).

In *Krebs v. Schwarz*, 212 Wis. 2d 127, 568 N.W.2d 26 (Ct. App. 1997), we upheld an equivalent condition of probation. Krebs, like Smiley, was convicted of a child sex offense and was prohibited from entering into an intimate or sexual relationship without first obtaining approval from the DOC agent assigned to supervise him. *See id.* at 129-30. Krebs argued that the condition was unconstitutionally overbroad. *Id.* at 130-31. We concluded that the condition was reasonable and not overly broad. *Id.* at 131. We explained: “Although this may be a constriction of a constitutional right, it is not a denial of it. We conclude that the condition is not overly broad; rather, it is no more than an inconvenience.” *Id.* We also concluded that the condition was reasonable because it was rationally related to Krebs’ rehabilitation by forcing him to be honest with others about his history of sexually deviant behavior. *Id.* at 131-32. It also served to protect the public by allowing the agent to confirm that the potential romantic partner is

an adult and by alerting any potential partner who may have children or grandchildren that Krebs is a sex offender. *Id.* at 132.

The facts here are indistinguishable from the facts in *Krebs*, and this compels the conclusion that the dating rule in this case is a reasonable condition of Smiley's supervision.

Moreover, Smiley has failed to file a reply brief on appeal responding to the argument in the respondent's brief that *Krebs* forecloses Smiley's current challenge to the dating rule. Propositions asserted by a respondent on appeal and not disputed by the appellant in the reply brief may be taken as admitted, see *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (stating that the failure to refute a proposition asserted in a response brief may be taken as a concession), and we see no reason in this appeal not to treat Smiley's failure to respond as a concession.

Smiley also argues that the DOC forfeited any argument disputing Smiley's constitutional challenge to the dating rule by failing to respond to Smiley's arguments at the agency level.² See *Goranson v. DILHR*, 94 Wis. 2d 537, 545, 289 N.W.2d 270 (1980) (in appeals concerning agency decisions, issues must have been raised before the agency to be considered on appeal). He also contends that this court should disallow any post hoc rationalization of the DOC's decision. See *Bagdonas v. Department of Treasury*, 93 F.3d 422, 426 (7th Cir. 1996) ("It is, of course, well settled that courts cannot accept counsel's post hoc

² Smiley also argues that the DOC *conceded* his arguments by not refuting them at the agency level, citing the general proposition that arguments raised on *appeal* that are not refuted may be taken as conceded. See *State ex rel. Blank v. Gramling*, 219 Wis. 196, 199, 262 N.W. 614 (1935) (arguments on appeal that are not refuted may be taken as conceded). However, Smiley makes no argument that the DOC conceded the arguments he makes by failing to refute them *on appeal*. We therefore do not address Smiley's argument of concession based on *Blank*.

rationalization for agency action.”). However, as set forth above, the DOC did explain why it rejected Smiley’s challenge to the dating rule. The DOC explained that the dating rule does not prohibit Smiley from having dating relationships; it only requires him to obtain approval to do so. This was a sufficient response to Smiley’s challenge to the rule. See **Krebs**, 212 Wis. 2d at 131 (stating that a dating rule was not unconstitutional because it merely constricted, and did not deny, a constitutional right); see also **Wisconsin’s Env’t Decade, Inc. v. PSC**, 98 Wis. 2d 682, 701, 298 N.W.2d 205 (Ct. App. 1980) (while agency must state the reasons for its decision, “[t]here is no requirement ... that the agency provide an elaborate opinion. It is sufficient if the findings of fact and conclusions of law are specific enough to inform the parties and the courts on appeal of the basis of the decision”).

Smiley further contends that the DOC erred by relying on the fact that the dating rule is a “standard” rule of sex offender supervision rather than exercising its discretion in setting the rules of his supervision. He points out that a sentence must be individualized, see **State v. Gallion**, 2004 WI 42, ¶48, 270 Wis. 2d 535, 678 N.W.2d 197, and that conditions of supervision are part of a sentence, see **State v. King**, 2020 WI App 66, ¶38, 394 Wis. 2d 431, 950 N.W.2d 891. Here, he argues, the DOC imposed a standard rule that was not individualized to Smiley and failed to exercise its discretion in imposing the dating rule. See **Riesch**, 278 Wis. 2d 24, ¶30 (DOC has discretion to set the rules of supervision). We disagree.

As set forth above, the DOC explained that the dating rule was imposed based on Smiley’s conviction for a child sexual offense. The DOC explained why the dating rule is necessary as part of Smiley’s supervision. Smiley has not shown that the fact that the dating rule is standard for sex offender supervision means that it was not individualized based on Smiley’s

conviction. We conclude that the DOC sufficiently explained its exercise of discretion in imposing the dating rule in his case.

Separately, Smiley contends that the DOC violated his due process rights by failing to provide a complete record for review. See *State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 740, 454 N.W.2d 18 (Ct. App. 1990) (stating that “if an agency on certiorari fails to return a record sufficient to demonstrate that the proceedings before it were procedurally proper, we may vacate the agency’s decision”). Smiley contends that the record is incomplete because the DOC’s final decision states that the reviewing DOC administrator agrees with prior decisions by Smiley’s agent and DOC’s assistant regional chief, even though those prior decisions are not included in the record. However, the decision by the assistant regional chief is in the record. And, Smiley does not explain how the absence from the record of an earlier communication from his agent on the same issue renders the record insufficient for this court’s review. The substantive issue that Smiley raises on appeal is whether the DOC erred by denying Smiley’s challenge to a rule of his extended supervision. The record before this court is sufficient to show that the DOC properly denied Smiley’s challenge to the dating rule.

And, on these issues as on the earlier one, Smiley has not filed a reply brief on appeal to dispute the arguments in the respondent’s brief that Smiley’s claims of procedural error lack merit. See *United Coop.*, 304 Wis. 2d 750, ¶39. We take Smiley to concede those arguments as well.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to 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