COURT OF APPEALS
DECISION
DATED AND FILED

February 15, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 98-3539

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN EX REL.
ROBERT SKENANDORE,

APPELLANT,

V.

MICHAEL J. SULLIVAN, SECRETARY OF
DEPARTMENT OF CORRECTIONS,

RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

¶1 PER CURIAM. Robert Skenandore, Sr., appeals from an order denying his petition for a writ of certiorari. He claims the trial court erred in refusing to grant the petition. Because the trial court did not err, we affirm.

BACKGROUND

¶2 Skenandore pled guilty to a charge of burglary on September 7, 1983. He received a sentence of seven years in prison, followed by seven years of probation. On May 30, 1995, he pled guilty to a battery charge and was sentenced to five months' incarceration consecutive to the burglary sentence. In 1989, he completed the initial burglary sentence and began his seven-year period of probation. From 1992-1995 he served several periods of incarceration resulting from escapes. In May 1995, he was convicted of the battery. In November 1996, he was incarcerated at the Kettle Moraine Correctional Institution and was paroled from there on November 27, 1996. In March 1997, his parole was revoked and he is presently incarcerated at the Oshkosh Correctional Institution. On May 15, 1998, Skenandore was given a parole interview, but parole was denied and he received a twelve-month deferral.

¶3 Skenandore then petitioned for the issuance of a writ of certiorari alleging, in essence, that he was entitled to a presumption of parole and that the record did not support the denial of parole. The circuit court denied his petition. Skenandore now appeals.

STANDARD OF REVIEW

¶4 This court's scope of review is identical to that of the circuit court on certiorari. *See* ***State ex rel. Staples v. DHSS***, 136 Wis. 2d 487, 493, 402 N.W.2d 369 (Ct. App. 1987). A decision to deny parole is reviewable by common law certiorari. *See* ***State v. Goulette***, 65 Wis. 2d 207, 213-16, 222 N.W.2d 622 (1974). The certiorari standard of review for parole denial is as follows:

> The scope of review on certiorari is limited to whether: (1) the Commission kept within its jurisdiction; (2) it acted

> according to law; (3) its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that it might reasonably make the order or determination in question.

State v. ex rel. Hansen v. Dane County Cir. Court, 181 Wis. 2d 993, 998-99, 513 N.W.2d 139 (Ct. App. 1994) (citation omitted).

¶5 It is the inmate who must prove that the action was arbitrary and capricious and, unless that burden is met, the court will not interfere with the decision. *See* ***State ex rel. Johnson v. Cady***, 50 Wis. 2d 540, 549-50, 185 N.W.2d 306 (1971). There is a presumption of regularity attached to administrative agency action and orders. *See* ***Pire v. State Aeronautics Comm.***, 25 Wis. 2d 265, 273, 130 N.W.2d 812 (1964). Thus, the burden placed on a petitioner in a certiorari action is considerable:

> "The board is presumed to have had before it information which warranted the order … and its determination of the matter is conclusive unless the prisoner can prove by a preponderance of the evidence the board's action was arbitrary and capricious. That burden rests squarely on the prisoner, and if he fails to sustain the burden, the courts will not interfere with the board's decision."

Johnson, 50 Wis. 2d at 550 (citation omitted).

¶6 On review by certiorari, we are confined to the record. *See* ***State ex rel. Conn v. Board of Trustees***, 44 Wis. 2d 479, 482, 171 N.W.2d 418 (1969). The court may not substitute its view of the evidence for that of the corrections officials. *See* ***Van Ermen v. DHSS***, 84 Wis. 2d 57, 64, 267 N.W.2d 17 (1978). Under the substantial evidence test, the court is not permitted "to pass on credibility or to reverse an administrative decision because it is against the great weight and clear preponderance of the evidence, if there is substantial evidence to sustain it;" where two conflicting views may be sustained by substantial evidence,

it is for the agency to determine which view of the evidence it wishes to accept. *See* ***Robertson Transp., Co. v. Public Serv. Comm'n***, 39 Wis. 2d 653, 658, 159 N.W.2d 636 (1968).

¶7 The agency's decision must be upheld if supported by any reasonable view of the evidence. *See* ***Nufer v. Village Bd. of Palmyra***, 92 Wis. 2d 289, 301, 284 N.W.2d 649 (1979). The court's inquiry is limited to whether there is substantial evidence to support the decision; i.e., "whether reasonable minds could arrive at the same conclusion reached by the Department." ***State ex rel. Palleon v. Musolf***, 120 Wis. 2d 545, 549, 356 N.W.2d 487 (1984).

ANALYSIS

¶8 In reviewing this appeal it was not easy to ascertain the precise issues that Skenandore asserts. To the best of our ability, we deem the following to be the basis for this appeal: (1) whether Skenandore was improperly deprived of a property interest; (2) whether he was entitled to a presumption of parole because he obtained a G.E.D. in August 1980; (3) whether his rights were violated by failure to include in the record the standards and criteria for parole; (4) whether the reference by the circuit court in its decision to sexual assaults violated any of his rights; and (5) whether the record supports the parole commission's action. We shall address each perceived issue in turn.[1]

¶9 We first consider what we believe to be Skenandore's underlying complaint: that he had a protected Fourteenth Amendment liberty interest in

[1] Although we are not obligated to consider undeveloped or unintelligible arguments, *see* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), because of appellant's status, we have endeavored to glean sense and logic from his briefs.

obtaining a discretionary parole. Such an interest can arise from the due process clause or from the laws of the states. *See* ***Hewitt v. Helms***, 459 U.S. 460, 466 (1983). However, discretionary parole, which is at issue here, involves only the possibility of parole and is no more than a mere hope; accordingly, the possibility is not protected by due process. *See* ***Greenholtz v. Inmates of Nebraska Penal and Correctional Complex***, 442 U.S. 1, 11 (1979).

¶10 Under the law of some states, it is possible to create a protected property interest in a parole release decision. *See* ***Board of Pardons v. Allen***, 482 U.S. 369, 377-80 (1987). Wisconsin's parole, however, is wholly discretionary, and clearly does not grant the right or privilege to parole upon a prisoner. *See* ***Tyler v. State Dep't of Pub. Welfare***, 19 Wis. 2d 166, 119 N.W.2d 460 (1963). In the absence then of a protected property interest, due process concerns are not implicated.

¶11 Skenandore's second claim of error is the failure to recognize his entitlement to a presumption of parole under WIS. STAT. § 304.06(lr) (1989-90), because he obtained a G.E.D. in August 1980. We have examined the record and find no mention of this issue raised either during his parole interview or included in his petition for writ of certiorari. Because Skenandore did not raise this issue at the administrative level, and failed to raise it in his petition, it is deemed waived. *See* ***Omernick v. DNR***, 94 Wis. 2d 309, 312, 287 N.W.2d 841 (Ct. App. 1979), *aff'd*, 100 Wis. 2d 234, 301 N.W.2d 437 (1981); ***Tourville v. S.D. Seavey Co.***, 124 Wis. 56, 58, 102 N.W. 352 (1905).

¶12 Third, Skenandore claims his due process and equal protection rights were violated by the failure of the commission to include in the record the standards and criteria for parole and a DOC-90 form. In our order dated March 1,

1999, in response to Skenandore's request to supplement the record in this appeal with copies of the same standards and form, we concluded that we "can only consider materials that were before the circuit court when it rendered the decision that is the subject of an appeal." Doubtless, we can take judicial notice of the criteria set forth in WIS. STATS. § 304.06, and WIS. ADMIN. CODE § PAC 1.06, and such material is readily available to Skenandore. Nevertheless, he does not cite any authority that the absence of such information in the record deprives him of any alleged rights. We need not consider arguments that remain undeveloped and are unsupported by authority. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶13 Next, Skenandore asserts that the circuit court's reference to sexual assaults in its decision denying his petition violated his rights to due process and equal protection. Although his argument is not altogether clear, it appears Skenandore is suggesting that the circuit court analyzed and evaluated his petition as if he were incarcerated for sexual assaults. We are not convinced.

¶14 In one sentence of the circuit court's eight-page decision, the phrase "sexual assaults" is used twice. It is completely out of context to the balance of the decision. The decision itself mentions Skenandore's burglary record on seven separate occasions, indicating the trial court clearly was aware that he was incarcerated for that offense. At most, this apparent error, and it is only "apparent," can be attributed to sloppy proofreading, or scrivener's error. We conclude it did not adversely affect any of Skenandore's rights.

¶15 Lastly, Skenandore claims that the record does not support the parole commission's action. The record belies his claim. Skenandore admitted that he escaped from custody on numerous occasions and during one of these escapades

committed battery. He refused to enroll in prescribed treatment programs except AODA treatment. Additionally, he received six conduct reports for a variety of reasons. The commission found that he had not served sufficient time, that his institution conduct was unsatisfactory, that his program participation was unsatisfactory, that his parole plan was vague, and that his release would involve an unreasonable risk to the public. The record amply supports these determinations and sequential conclusions. There was no error.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.