COURT OF APPEALS
DECISION
DATED AND RELEASED

June 29, 1995

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

NOTICE

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

No. 94-2469

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

STATE OF WISCONSIN
EX REL. JEFFREY PLUMMER,

Petitioner-Appellant,

v.

STATE OF WISCONSIN, DEPARTMENT
OF CORRECTIONS, DIVISION OF
PROBATION AND PAROLE,

Respondent-Respondent.

APPEAL from an order of the circuit court for Rock County: JAMES E. WELKER, Judge. *Affirmed*.

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. This is an appeal from an order denying Jeffrey Plumber's petition for a writ of certiorari. We are asked to review a Department

of Corrections's decision to revoke Plummer's parole. We conclude that the department kept within its jurisdiction, acted according to law, and that its decision to revoke was not arbitrary, oppressive or unreasonable. We also conclude that the evidence was such that the department might reasonably make the order in question. Accordingly, we affirm.

Background

Plummer was paroled from prison in January of 1991. After his release, he spent a great deal of time with Laurie and her children. In February 1993, Laurie's niece, Melody, was staying at Laurie's house. One night, while she was trying to fall asleep, Plummer put his hand down her pants and touched her buttocks. After Melody related this incident to Laurie, Plummer telephoned Melody in July, asked her for a truce and threatened her. Later that year, Melody finally told a police officer about Plummer's behavior.

As a result of these actions, the department held a hearing to determine whether Plummer's parole should be revoked. The hearing examiner found that Plummer had violated a condition of parole which provides, "You shall avoid all conduct which is in violation of federal or state statute, municipal or county ordinances or which is not in the best interest of the public welfare or your rehabilitation." The department revoked Plummer's parole, forfeited Plummer's "good time," and Plummer was returned to prison.

Standard of Review

In certiorari actions we are confined to the record and our review is limited to determining: (1) whether the department kept within its jurisdiction; (2) whether it acted in accordance with the law; (3) whether its actions were arbitrary, oppressive or unreasonable; and (4) whether the evidence was such that it might reasonably make the decision that it did. ***State ex rel. Jones v. Franklin***, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App. 1989). The department's factual findings are conclusive if supported by "any

reasonable view" of the evidence, and we may not substitute our view of the evidence for that of the department. ***Id.***

We uphold an agency's factual findings as long as they are supported by substantial evidence. ***Cornwell Personnel Assocs., Ltd. v. LIRC***, 175 Wis.2d 537, 544, 499 N.W.2d 705, 707 (Ct. App. 1993). Substantial evidence is evidence that is relevant, credible, probative, and of a quantum upon which a reasonable fact finder could base a conclusion. ***Id.***

Substantial Evidence

Plummer asserts that the department's decision to revoke his parole was arbitrary, oppressive and unreasonable and not supported by substantial evidence because the examiner failed to address a variety of inconsistencies in Melody's testimony. He asserts that this constitutes an omission of necessary factual findings or makes the department's decision inconclusive or unclear. *See* ***Connecticut General Life Ins. Co. v. DILHR***, 86 Wis.2d 393, 404-05, 273 N.W.2d 206, 211 (1979).

We do not accept Plummer's assertion that because the department did not discuss all of that part of Melody's testimony which might be inconsistent, the department's decision is arbitrary, oppressive and unreasonable. First, Plummer cites no authority for his assertion that the department's decision must discuss all inconsistencies in a complaining witnesses's testimony. In ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 377-78 (Ct. App. 1980), we said that we would not consider arguments not supported by specific citations to authority. We will not do so here.

Second, the department did consider the fact that Melody's testimony was inconsistent, though not in the detail Plummer would prefer.

The examiner noted:

> Counsel points out many inconsistencies in [Melody's] statements since the incident. A review of [Melody's] tape recorded testimony or her handwritten statement of October 15, 1993[,] shows [Melody] is not able to organize nor express her thoughts clearly. That inability does not diminish her credibility. The examiner finds nothing in [Melody's] prior statements sufficient to discredit her testimony regarding this assault.

(Citation omitted.)

The examiner also noted:

> There are other factors which support Melody's testimony and cause the examiner to believe her. [Laurie's] home was [Melody's] sanctuary when [Melody] received a beating from her father. It is incredible [Melody] would risk losing that sanctuary if her story were not true. [Melody] sought out a police officer and told her story without prompting. The client and [Laurie] found [Melody] talking to the police and [Melody] rejected [Laurie's] offers to take her home. The client left abruptly from that scene. The client videotaped [Melody] and KG sleeping without any explanation. The client's presence on the basement stairs on February 7, 1993, also supports [Melody's] testimony.

(Citations omitted.)

These findings were based on Melody's testimony, which the examiner found credible and convincing. These excerpts also show that the evidence supporting the decision was sufficient. All that was necessary was

Melody's testimony that Plummer put his hand down her pants and touched her buttocks. There is no question but that Melody testified that he did.

Departmental Findings

Plummer also asserts that the department's decision must be reversed because it failed to make necessary findings. He contends that where the department fails to set forth adequate reasons for its decision, we should independently review the record to determine whether it provides a basis for the department's decision. *See* ***State v. Pharr***, 115 Wis.2d 334, 343, 340 N.W.2d 498, 502 (1983). Though we conclude that the department's decision is adequate, we will nonetheless independently review the record.

The question before the department was whether Plummer had violated a condition of parole. When a trial court, on certiorari, considers whether the evidence is such that the department might reasonably have made the order or determination in question, the court is not called upon to weigh the evidence; certiorari is not a *de novo* review. The inquiry is limited to whether there is substantial evidence to support the department's decision. ***Cornwell Personnel***, 175 Wis.2d at 544, 499 N.W.2d at 707.

Melody testified, "I woke up with him putting his hands down my pants. Now, I know it was him because he has this big old ring, and it was really cold. Then I moved. I turned over towards [K.], and he had his hands on my butt." Melody later identified Plummer as her assailant, stating, "First I felt—I felt him. Then I looked up." She further testified that during a telephone conversation Plummer had told her to "watch [her] back," after she had refused his offer to "play it truce."

Section 948.02(2), STATS., provides, "Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony." Section 940.45(3), STATS., proscribes intimidation of a witness accompanied by any express or implied threat of force, violence, injury or damage.

The evidence is sufficient to show that Plummer violated both §§ 948.02(2) and 940.45(3), STATS. That constitutes a violation of one of his

conditions of parole. Accordingly, we affirm the department's decision to revoke Plummer's parole.

By the Court.—Order affirmed.

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