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DISTRICT II

October 1, 2025

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

2024AP1560-CR

State of Wisconsin v. Joseph T. Davila (L.C. #2022CF1204)

Before Neubauer, P.J., Grogan, and Lazar, 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).

Joseph T. Davila appeals from a judgment convicting him of threatening to cause bodily harm to a police officer after Davila threatened, among other things, to rip the officer's face off. He also appeals from an order denying postconviction relief. He argues the circuit court erroneously exercised its discretion when it imposed several alcohol-related restrictions as a condition of extended supervision. 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 affirm in part, reverse in part, and cause remanded to the circuit court to enter an order setting conditions for extended supervision consistent with this order.

The facts relevant to this appeal are minimal and undisputed. Davila pled guilty to threat to a law enforcement officer pursuant to his arrest for offenses involving domestic violence. Two other charges against Davila were dismissed and read in pursuant to an agreement with the State. The circuit court imposed a bifurcated sentence of 18 months of initial confinement and 24 months of extended supervision. The court ordered conditions of extended supervision to include: prohibiting Davila from possessing or consuming alcohol, having alcoholic beverages within any place he resides, and entering any establishment licensed to sell alcohol, except for restaurants or grocery stores.

Davila filed a motion for postconviction relief seeking modification of the alcohol-related conditions of his extended supervision. Davila argued that these conditions were unreasonable and violated his constitutional rights, particularly because there is no indication anywhere on the Record that alcohol played a role in Davila's criminal conduct. The circuit court disagreed and concluded that the conditions were reasonably related to the court's sentencing goals of protecting the public and furthering Davila's rehabilitation by ensuring his sobriety during extended supervision. Furthermore, the court found that the conditions did not violate Davila's constitutional rights because they were not overly broad. Davila appeals.

Davila argues that the circuit court erroneously exercised its discretion in imposing the alcohol-related conditions prohibiting him from: (1) possessing or consuming alcoholic

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

beverages; (2) residing where alcoholic beverages are present anywhere within the home; and (3) entering taverns or any premises licensed for the sale of intoxicating beverages, except for grocery stores and restaurants. Davila asserts that the alcohol-related conditions are inappropriate because his conviction did not involve alcohol and he has no record of alcohol abuse; thus, he argues, the conditions were not narrowly tailored to achieve the sentencing goals related to Davila. He also argues that the restrictions are overly broad and the sentencing goals could be achieved by narrower means.

The State argues that all the alcohol-related conditions the circuit court ordered are appropriately tailored to protecting the public and rehabilitating Davila; as such, the court did not erroneously exercise its discretion in making this connection between sobriety and rehabilitation, or in applying this connection in Davila's case. We agree with the State, as we now explain, except as it relates to the condition prohibiting Davila from living in a home with any alcohol present. We conclude that condition is overly broad and, therefore, unconstitutional under the circumstances presented.

A sentencing court has:

wide discretion and may impose any conditions of probation or supervision that appear to be reasonable and appropriate. We review such conditions under the erroneous exercise of discretion standard to determine their validity and reasonableness measured by how well they serve their objectives: rehabilitation and protection of the state and community interest.

State v. Davis, 2017 WI App 55, ¶12, 377 Wis. 2d 678, 901 N.W.2d 488 (quoting *State v. Stewart*, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165). Whether the challenged condition violates the defendant's constitutional rights is a question of law that we review de novo. *Stewart*, 291 Wis. 2d 480, ¶12.

Sentencing courts are permitted to impose conditions of extended supervision that restrict the movement of the person under supervision, including banning a defendant from a certain geographic area or limiting the types of establishments he or she can visit, provided that those restrictions are narrowly drawn and serve one of the core purposes of supervision. *Id.*, ¶¶13, 18-20. In this case, the sentencing court was permitted to determine that Davila may be less likely to engage in the impulsive and aggressive behavior that got him into trouble if he were to avoid consuming alcohol or frequenting bars and night clubs, where he could present a danger to members of the community who are likely to have lowered inhibitions themselves. Although alcohol use was not a factor in Davila’s offenses, the nature of Davila’s conviction suggests difficulties with emotional regulation and anger management issues.

As this court explained in *Davis*, it is “common knowledge” that “alcohol consumption ‘may impair judgment’ and is ‘often linked to violent or aggressive behavior. ...’” *Davis*, 377 Wis. 2d 678, ¶16. It is also well established that alcohol use lowers inhibitions. *State v. Flattum*, 122 Wis. 2d 282, 296 n.5, 361 N.W.2d 705 (1985). Like in *Davis*, it was “not a stretch” for the sentencing court here to believe that both Davila and the community would be better served by conditions aimed at keeping Davila sober, particularly while he is interacting with members of the community. *See Davis*, 377 Wis. 2d 678, ¶16. Therefore, it was not an erroneous exercise of discretion for the court to prohibit Davila from possessing or consuming alcohol or to limit the types of establishments he can frequent while on extended supervision.

However, there are limitations on conditions that a sentencing court can impose on a defendant during extended supervision. For example, if the conditions are overbroad or fail to serve the goals of supervision, they are inappropriate. *Stewart*, 291 Wis. 2d 480, ¶¶21-22. And

if a court imposes an expansive restriction on a supervised person's movement when a narrow one would do, it violates due process. *Id.*, ¶2. Based on our application of these principles to the facts in the Record, we agree with Davila that the condition that he is not allowed to “have alcoholic beverages within the residence” is overly broad and inappropriate here.

Prohibiting Davila from living in a residence with any alcohol present regardless of whether Davila possesses or consumes it, restricts his movement and makes it extremely difficult, if not impossible, for him to live in many places. Davila explains that at the time of the postconviction motion hearing, he was preparing for release. He states that this preparation involves Department of Corrections staff assisting him with temporary housing and that such housing will likely involve living with other adults, probably multiple other adults. Davila argues that restricting him from residing in any home with alcohol present is overly broad and unfairly limits his prospects for roommates.

We agree with Davila's arguments as set forth above and conclude that a condition to not have alcohol in any residence at which he resides unnecessarily impinges upon Davila's right to associate. That condition is overly broad. The circuit court could have achieved its sentencing goals through the narrower restriction of prohibiting Davila from possessing or consuming alcohol—which it did impose, and we uphold as appropriate—without subjecting him to a supervision violation based on his roommates' conduct or attempting to restrict those with whom he resides. In sum, the court's imposition of a condition for which his extended supervision could be revoked, yet over which he may have no control (for example, a roommate or a roommate's guest could bring alcohol into his home and Davila may not know or, even if he does, he may not have authority to require its removal) is not appropriate. Therefore, this

condition must be stricken as being overly broad. *See id.*, ¶¶2, 12 (holding that a condition that is not narrowly drawn must be stricken).

Based on the foregoing, we conclude that all but one of the challenged conditions of extended supervision imposed were reasonably related to both ensuring that Davila does not commit additional crimes, and to furthering his rehabilitation as he learns to make choices that will not endanger his own life or the lives of those in the community. The condition that Davila not be allowed to have alcohol in his residence, however, is overly broad and the circuit court erroneously exercised its discretion in ordering it. On remand, the court is instructed to amend the conditions of extended supervision to make them consistent with this opinion and order.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are affirmed in part, reversed in part, and cause remanded. *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