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DISTRICT IV

May 20, 2021

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

2020AP276 State of Wisconsin v. Charles G. Anderson (L.C. # 2005CI4)

Before Fitzpatrick, 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).

Charles Anderson appeals an order revoking his supervised release under WIS. STAT. ch. 980 (2019-20).[1] 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. We affirm.

The relevant statute provides two grounds for revoking supervised release. Under both grounds, the State must prove the grounds for revocation by clear and convincing evidence. The first ground occurs when the court finds "that any rule or condition of release has been violated and the court finds that the violation of the rule or condition merits the revocation of the order granting supervised release." WIS. STAT. § 980.08(8)(a). On this first ground only, the statute further provides: "The court may consider alternatives to revocation." Sec. 980.08(8)(a). The second ground occurs when the court finds "that the safety of others requires that supervised release be revoked." Sec. 980.08(8)(b).

On appeal, Anderson argues that, because the circuit court did not make a finding that the safety of others required his supervised release to be revoked, the court must have revoked his release based on the first ground, rule violations. If so, Anderson argues, the order should be reversed because the circuit court failed to consider alternatives to revocation, which Anderson asserts it was required to do.

Anderson's argument appears to be based entirely on the circuit court's oral decision, without taking into account the written order. The circuit court's oral decision is not entirely clear about which of these grounds it relied on, as the court referred to both rule violations and safety concerns. However, the circuit court's written order is unambiguous. It states that the

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

circuit court finds "that the respondent violated his rules of supervised release [and t]hose violations raise a risk such that a reasonable alternative to revocation is not available at this time[.]"

Anderson has not argued on appeal that the written order failed to accurately set forth the circuit court's oral decision, and has not suggested that he submitted such an objection about the form of the written order to the circuit court at the time. Therefore, we rely on the written order as forming part of the court's decision.

Doing so, it is clear that Anderson is correct that the circuit court relied on the rule violation provision in WIS. STAT. § 980.08(8)(a). We turn to his argument that the circuit court was required and failed to consider alternatives to revocation before revoking Anderson's supervised release.

Anderson has not persuaded us that the circuit court was required to consider alternatives to revocation. As quoted above, the statute provides that the court "may" consider alternatives, not that it shall consider them. For support, Anderson relies on a case that preceded the statutory amendment adding the revocation language, which occurred in 2005 Wis. Act 434, § 122. In that opinion, the supreme court stated that the rule violation provision for revocation that was in effect at the time:

> does not state explicitly what the court must consider or what the court must explain. However, given the wide range of potential rule violations, including the failure to pay fines and restitution, we expect courts will recognize that revocation of supervised release based upon violation of one or more conditions or rules is likely to receive much closer scrutiny than revocation based on a finding that "the safety of others requires" revocation. In such a case, a court should explore alternatives or fully explain why some step short of revocation would not be adequate.

State v. Burris, 2004 WI 91, ¶44, 273 Wis. 2d 294, 682, N.W.2d 812.

We do not read ***Burris*** as creating a basis for reversal if a circuit court does not explore alternatives to revocation or explain the lack of alternatives. The ***Burris*** court encouraged those acts, but did not require them. And, to the extent the ***Burris*** opinion might be read as requiring them, in the absence of statutory language stating what the court must consider, there was no longer an absence of statutory language when the statute was amended to state that the court "may" rather than "shall" consider alternatives to revocation.

Furthermore, the circuit court here did consider alternatives to revocation, contrary to Anderson's assertion. The circuit court's written order plainly states that Anderson's rule violations "raise a risk such that a reasonable alternative to revocation is not available at this time."

Finally, to the extent that Anderson may be suggesting that the circuit court's rejection of alternatives to revocation was an erroneous exercise of discretion, we disagree. It was a reasonable conclusion, based on the nature of his rule violations and the expert psychological opinions.

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

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

Sheila T. Reiff
Clerk of Court of Appeals