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**DISTRICT II**

March 19, 2025

*To:*

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Clerk of Circuit Court  
Racine County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2024AP304

Jorge Vela v. Jon Erpenback (L.C. #2023CV284)

Before Neubauer, 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).**

Jorge Vela appeals from a circuit court order upholding a Wisconsin Parole Commission (the Commission) decision by the Commission chairperson that denied Vela parole and deferred further consideration of parole for a twelve-month period. 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).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

Vela was convicted of first-degree intentional homicide after he stabbed his wife twenty-eight times in front of the couples' three adolescent children and two friends of the family. Vela was sentenced to life imprisonment with eligibility for parole only after Vela served at least twenty-five years in confinement. In 2016, Vela applied for parole and met with the Commission for the first time. The Commission denied him release on parole and deferred his next consideration for thirty-six months. Since then, Vela has received regular parole reviews, and the Commission has consistently concluded that he does not meet the criteria for release.

In late 2022, the Commission denied Vela's most recent parole application and issued a twelve-month deferral based on its conclusions that release would depreciate the severity of the crime and Vela posed an unreasonable risk to the public. The Commission recounted the horrific details of Vela's crime against his wife and highlighted his history of assaultive behavior, including an incident where Vela beat his own brother until his brother lost consciousness, his participation in a bar fight, and two incidents prior to the homicide in which he assaulted his wife. Moreover, although noting Vela's solid work history and generally good behavior while imprisoned, the Commission expressed concern over whether Vela's familial connection to the United States may lead him to abandon his arranged release plan of living in Mexico and illegally return to the United States. Finally, the Commission heard statements at the parole hearing from four members of the victim's family who all strongly opposed Vela's release to parole.

In early 2023, Commission Chairman Jon Erpenbach reviewed and approved the parole denial and twelve-month deferral. Vela subsequently petitioned the circuit court for a writ of certiorari challenging the Commission's decision denying him release on parole. The court

issued a writ of certiorari, and the Commission filed the certified Record, as ordered by the court. After briefing by the parties, the court denied certiorari relief, concluding that the Commission’s decision was reasonable and supported by substantial evidence in the Record. Vela appeals.

The Commission based its decision on two factors in WIS. ADMIN. CODE § PAC 1.06(16) (Dec. 2010). Specifically, it determined that Vela’s claim failed under two paragraphs: (1) Vela had not served sufficient time such that release would depreciate the seriousness of his offense, and (4) Vela’s release would pose an unreasonable risk to the public. *See* § PAC 1.06(16)(b) and (h). We review the Commission’s decision on appeal to determine 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 ex rel. Hansen v. Circuit Ct. for Dane Cnty.*, 181 Wis. 2d 993, 998-99, 513 N.W.2d 139 (Ct. App. 1994).

Vela relies on the third of these four review criteria, arguing that the Commission’s decision was arbitrary and capricious, representing its will rather than its judgment. “An agency’s decision is not arbitrary and capricious and represents its judgment if it represents a proper exercise of discretion.” *Von Arx v. Schwarz*, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994). “A proper exercise of discretion contemplates a reasoning process based on the facts of record ‘and a conclusion based on a logical rationale founded upon proper legal standards.’” *Id.* (citation omitted). “We may not substitute our judgment for that of the [agency]; we inquire only whether substantial evidence supports [its] decision.” *Id.* “If substantial evidence supports [the agency’s] determination, it must be affirmed even though the evidence may support a contrary determination.” *Id.* “Substantial evidence is evidence that is

relevant, credible, probative, and of a quantum upon which a reasonable fact finder could base a conclusion.”” *Id.* (citation omitted).

Vela argues that the Commission’s decision was arbitrary and capricious because the Commission failed to sufficiently establish its reasoning for denying him parole and it relied on speculation. We conclude that, regardless of these claimed errors, the Commission’s decision was not arbitrary and capricious and was supported by substantial evidence. More specifically, there was substantial evidence to support the Commission’s determinations as to the factors it considered under WIS. ADMIN. CODE § PAC 1.06(16), and those factors support the Commission’s decision.

As to the first factor, whether Vela served sufficient time such that release would not depreciate the seriousness of his offense, we conclude that the Commission reasonably determined that the time Vela had so far served—approximately 31 years on a life sentence—was insufficient given the severity and nature of Vela’s crimes. The homicide Vela committed was extremely brutal and dangerous—he stabbed the mother of his children to death in front of them, and threatened to kill the others present if they intervened. The Commission further considered the impact of the homicide on the living victims, stating: “We know the details of the case. It is, it’s a heinous crime. An innocent victim. And [it has] impacted the family and the community in a very, very strong way, and they’ve articulated that today.” Substantial evidence supports the Commission’s conclusion that parole after Vela only served about thirty-one years of a life sentence would unduly depreciate the seriousness of the homicide he committed.

Turning to the Commission’s conclusion that Vela’s release would pose too great a risk to the public, Vela argues that the Commission’s determination that Vela remained violent was

based on improper speculation. Though we agree that every parole decision must necessarily be based on some speculation as to the likelihood of recidivism, Vela cites to no Wisconsin authority that prohibits speculation. We conclude that, based on the evidence available to it, the Commission reasonably determined that Vela's release would pose too great a risk to the public. It is true that the Commission referenced Vela's good prison conduct in assessing his dangerousness, but the Commission expressed equal if not greater concern with the nature of Vela's crimes and with his history of prior offenses. As discussed above, Vela had an admitted history of assaultive behavior while under the influence of drugs and alcohol, having committed several violent crimes while under the influence in the past. The evidence before the Commission on those topics was, by itself, enough to support the Commission's determination that Vela's release would pose too great a risk to the public. As summarized in the Commission's decision, the aggravating and violent nature of Vela's murder of his wife left the Commission in a position where it did not "feel any more comfortable about release today than ... when we started" back in 2016.

Vela's arguments that certiorari is warranted because he was entitled to release on his parole eligibility date, the Commission was required to communicate to Vela the conditions he needed to fulfill to be paroled, the Commission improperly speculated about whether Vela would return to the United States illegally if deported to Mexico, and the Commission improperly referenced the length of Vela's prior parole deferrals and the reduction of those deferral periods are all without any basis in Wisconsin law. Vela largely bases his arguments on the apparent assumption that he has a constitutionally-protected liberty interest in parole. However, Wisconsin has a discretionary parole system, which does not create a protectible liberty interest in release on parole. *Grennier v. Frank*, 453 F.3d 442, 444 (7th Cir. 2006) (observing that

defendant “lacks a liberty or property interest” in release on parole under Wisconsin’s discretionary parole system); *State ex rel. Gendrich v. Litscher*, 2001 WI App 163, ¶7, 246 Wis. 2d 814, 632 N.W.2d 878 (stating “Wisconsin’s discretionary parole scheme does not create a protectible liberty interest in parole”). Vela also makes other unsupported assumptions, including that the Commission must provide him with conditions necessary to achieve parole status, and the Commission cannot consider deportation status or prior deferrals. In sum, Vela fails to cite to any Wisconsin case law, statutes, or administrative code provisions that would require us to reverse the Commission’s parole decision.

Although the Commission recognized that Vela was doing well in prison, completed treatment, and had an adequate release plan, the Commission reasonably concluded that these factors were outweighed by the time and risk factors, given the seriousness of Vela’s offense, history of assaultive behavior, and victim impact. Thus, we conclude that the decision to deny Vela release on parole was not arbitrary, oppressive, or willful. Rather, the decision was reasonable in light of the evidence and represents a proper exercise of judgment and discretion. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*