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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2021AP809-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUNIOR L. WILLIAMS-HOLMES,

Defendant-Appellant.

On Appeal from a Judgment of Conviction and Order
Denying Postconviction Relief Entered in the
Kenosha County Circuit Court, the Honorable Bruce
Schroeder, Presiding.

BRIEF OF
DEFENDANT-APPELLANT

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CASES CITED

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State v. Horn,
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State v. Miller,
 175 Wis. 2d 204, 499 N.W.2d 215
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State v. Miller,
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STATUTES CITED

Wisconsin Statutes

§ 301.03(3) 5, 8, 9, 11

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§ 973.09(1)(a)..... 7, 8

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ISSUE PRESENTED

1. As a condition of probation and extended supervision, the circuit court ordered that Junior L. Williams-Holmes obtain permission from the court before living with women or children not related to him by blood. Did the circuit court err by requiring Mr. Williams-Holmes to seek permission from the court, instead of permission from his supervising agent?

The circuit court imposed the condition and denied Mr. Williams-Holmes' postconviction motion to amend the condition.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Publication may be appropriate to clarify the circuit court's role in supervising defendants serving a term of supervision. Mr. Williams-Holmes does not request oral argument because this case can be addressed adequately in briefing.

STATEMENT OF FACTS

On September 23, 2019, Mr. Williams-Holmes pled guilty to two counts of battery as a repeater, one count of false imprisonment as a repeater, and one count of misdemeanor bail jumping as a repeater. (31.) The complaint alleged that Mr. Williams-Holmes

committed acts of domestic abuse against his girlfriend over two days in June 2019. (1.)

On November 25, 2019, the court, the Honorable Bruce Schroeder, sentenced Mr. Williams-Holmes to two years in confinement followed by two years of extended supervision on two of the counts. (36:15-16.) The court withheld sentence on the other two counts, and placed Mr. Williams-Holmes on three years of consecutive probation. (36:16.)

When ordering conditions of extended supervision and probation, the court stated: “Given the history of domestic violence, you’re not to reside with any member of the opposite sex without the permission of the Court, nor reside with any child who is not related to you by blood without the permission of the Court.” (36:16.) That condition is reflected on the judgments of conviction. (31:2, 4.)

Mr. Williams-Holmes filed a postconviction motion, arguing that the condition must be modified to require him to get permission from his supervising agent, not the court, before living with women or children not related to him. (58.) The motion argued that Wis. Stat. § 301.03(3) grants the Department of Corrections (DOC), not the court, the authority to administer probation. Therefore, the circuit court lacked statutory authority to administer the condition and determine what women or children Mr. Williams-Holmes could live with.

The circuit court denied the motion, reasoning that because it was permitted to impose conditions of supervision, it was also permitted to monitor and

administer those conditions. (62; 64; App. 3, 4.) The court further explained that it did not believe the DOC could be trusted to administer this condition because agents were too lax when applying the condition. (64:3-4; App. 6-7.)

Mr. Williams-Holmes appeals.

ARGUMENT

- I. **The condition of supervision should be amended to require permission from the Department of Corrections, not the court, before Mr. Williams-Holmes may live with women or children not related to him by blood.**

The circuit court sought to empower itself to determine whether Mr. Williams-Holmes could live with women or non-biological children while he served his term of supervision. However, the statutes vest the Department of Corrections with the exclusive authority to administer and enforce rules of supervision. Therefore, the supervision condition must be amended to require permission from the DOC, not the court, before Mr. Williams-Holmes may live with women or children not related to him by blood.

A. The legislature has granted exclusive control to the DOC for administering probation.

The circuit court has broad discretion in setting conditions of both extended supervision and probation. *State v. Miller*, 2005 WI App 114, ¶ 11, 283 Wis. 2d 465, 701 N.W.2d 47; Wis. Stat. § 973.01(5) (concerning extended supervision conditions); *State v. Miller*, 175 Wis. 2d 204, 208, 499 N.W.2d 215 (Ct. App. 1993); Wis. Stat. § 973.09(1)(a) (concerning probation conditions). For both types of supervision, the court is permitted to impose reasonable and appropriate conditions intended to rehabilitate the defendant and protect the community. *Id.*

But the issue in this case does not turn on the court's discretion to impose a particular condition of supervision.¹ Mr. Williams-Holmes is not challenging the court's authority to impose a condition limiting his ability to live with women and unrelated children. Rather, this case turns on the circuit court's statutory authority to *administer* that condition. Thus, the issue is one of statutory interpretation, which this court reviews independently. *State v. Gray*, 225 Wis. 2d 39, 66, 590 N.W.2d 918 (1999).

The DOC has exclusive control over persons serving terms of probation and extended supervision. "Imposition of probation shall have the effect of placing the defendant in the custody of the [DOC] and

¹ This case involves a challenge to an identical term of probation and extended supervision. This brief will refer to the conditions jointly as a condition of "supervision."

shall subject the defendant to the control of the department” Wis. Stat. § 973.10(1). The DOC is responsible for “[a]dminister[ing] parole, extended supervision, and probation matters” Wis. Stat. § 301.03(3).

The statutes do not authorize the circuit court to administer supervision, to revoke supervision, or to control supervised offenders. The circuit court’s role is limited to setting conditions of supervision. Wis. Stat. §§ 973.01(5); 973.09(1)(a). The DOC is vested with the sole statutory authority for administering supervision, controlling the offender, and sanctioning rule violations. Wis. Stat. § 301.03(3)(a)-(c); Wis. Stat. § 973.10.²

Caselaw confirms that the circuit court’s role is limited to ordering a term of supervision, setting conditions, and determining the sentence to be served if the supervision is revoked. *See State v. Horn*, 226 Wis. 2d 637, 649, 594 N.W.2d 772 (1999). In *Horn*, the circuit court, the Honorable Bruce Schroeder, ruled that only the judicial branch could revoke probation, so the statute vesting that authority in the executive branch was unconstitutional. *Id.* at 641-42.

The Wisconsin Supreme Court reversed, holding that the “administration of probation” was the responsibility of the executive branch. *Id.* at 651-52. The court observed that the legislature had granted the circuit court authority to impose a sentence, but that the judicial role ended at that point: “Whether a

² The Department of Administration is responsible for eventual revocation proceedings. Wis. Stat. § 301.03(3).

convicted defendant is sentenced to prison or the circuit court imposes probation, the adversary system has terminated and the administrative process, vested in the executive branch of the government, directed to the correctional and rehabilitative processes of the parole and probation system has been substituted in its place.” *Id.* at 650 (internal punctuation omitted).

In another case, before the Wisconsin Supreme Court decided *Horn*, the Honorable Bruce Schroeder conducted a probation revocation hearing and revoked the defendant. *State v. Burchfield*, 230 Wis. 2d 348, 602 N.W.2d 154 (Ct. App. 1999). The defendant appealed and the State conceded that the circuit court had no authority to revoke probation because the statute gave that power to the DOC. *Id.* at 353-54. The court of appeals agreed and reversed, holding that *Horn* supported the defendant’s argument that “the executive branch has *exclusive statutory authority to administer and to revoke probation.*” *Id.* at 349 (emphasis added).

Sections 301.03(3) and 973.10 grant the DOC exclusive authority to administer probation and extended supervision. As *Horn* and *Burchfield* recognize, the circuit court’s role is limited to ordering conditions of supervision; the DOC is solely responsible for administering supervision. Therefore, the condition in this case must be modified to comply with the DOC’s role as administrator of supervision.

Notably, the state has previously conceded that this exact condition must be amended to require the defendant to obtain agent approval—not court

approval—before living with women or unrelated children. Brief of the Plaintiff-Respondent at 17, *State v. Exson*, No. 2020AP411-CR (WI App June 9, 2021).

- B. The postconviction court's rationale for retaining control over the condition of supervision is unsupportable.

In denying Mr. Williams-Holmes' postconviction motion to amend the condition of supervision, the circuit court ruled that it possessed statutory authority to administer the condition. (64; App. 4.) The circuit court did not identify any statute conferring this authority, but concluded that caselaw supported its decision.

The cases cited by the court do not permit a court to invade the DOC's exclusive statutory authority to administer probation and extended supervision. In *Linse*, a circuit court ordered that the defendant not have contact with the victim as a rule of probation. *State ex rel. Taylor v. Linse*, 161 Wis. 2d 719, 722, 469 N.W.2d 201 (Ct. App. 1991). The agent added a condition restricting the defendant's travel to a particular town. *Id.* The court struck that condition, finding that it was inconsistent with the defendant's rehabilitation. *Id.* The question on appeal was whether the court could modify a DOC-imposed rule of probation. The court of appeals held that the circuit court could modify a DOC-imposed condition when it conflicted with the court's goals for the term of supervision. *Id.* at 723-24. The court recognized that Wis. Stat. § 973.09(3)(a) expressly permitted the court to modify conditions of probation, and construed that

statute to include the ability to modify DOC-imposed conditions. *Id.* at 725.

Linse has no bearing on this case where there is no conflict between the DOC-imposed rules of supervision and those imposed by the court. The circuit court imposed a condition that Mr. Williams-Holmes not live with women or unrelated children. Mr. Williams-Holmes is not seeking to overturn that condition, and the DOC has not imposed a conflicting condition. Rather, the question is about whether the court or the DOC is responsible for administering that condition. The statutes plainly confer that administrative authority on the DOC and *Linse* does not contradict those statutes.

The circuit court also cited *State v. Gray*, 225 Wis. 2d 39, 590 N.W.2d 918 (1999), for the proposition that the circuit court is authorized to modify conditions of probation. Indeed, Wis. Stat. § 973.09(3)(a) explicitly permits the circuit court to modify conditions of probation at any time before the term expires. *Gray* merely affirms that this statutory authority permits the court to modify the conditions of probation before the defendant actually begins serving the term of probation. *Id.* at 67-68. *Gray* does not purport to confer on circuit courts the authority to administer a condition of probation after it has been ordered.

The legislature has vested the exclusive authority to administer probation in the Department of Corrections. Wis. Stat. §§ 301.03(3); 973.10. Therefore, the circuit court lacked authority to impose

a condition requiring Mr. Williams-Holmes to obtain court approval before living with women or unrelated children. Instead, the condition must be modified to require Mr. Williams-Holmes to obtain permission from his probation/extended supervision agent.

CONCLUSION

For the reasons stated above, Mr. Williams-Holmes requests that the court reverse and remand with instructions that the judgment of conviction be amended to require agent permission, not court permission, before he may live with women or children not related to him by blood.

Dated this 22nd day of July, 2021.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. the length of this brief is 1,693 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 22nd day of July, 2021.

Signed:

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