STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT II

Case No. 2021AP809-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUNIOR L. WILLIAMS-HOLMES,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING POSTCONVICTION RELIEF, BOTH ENTERED IN THE CIRCUIT COURT FOR KENOSHA COUNTY, THE HONORABLE BRUCE E. SCHROEDER, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Defendant-Appellant Junior L. Williams-Holmes was convicted and sentenced for battering and falsely imprisoning his cohabitating girlfriend. Cognizant of Williams-Holmes's lengthy criminal history, which included acts of domestic violence and other assaultive crimes, the circuit court ordered that Williams-Holmes not reside with women or nonbiological children during his terms of probation and extended supervision unless he first obtains the court's permission. Was the court authorized to order that condition?

The circuit court answered yes.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not warranted as the arguments are fully developed in the parties' briefs. Aware of unpublished and uncitable Wisconsin decisions that seemingly resolve this appeal's central issue inconsistently, the State requests publication to clarify whether and when a sentencing court may order a defendant to return before it to seek exemption from or modification to a condition of supervision.

SUPPLEMENTAL STATEMENT OF THE CASE

The charges, plea, and sentencing

In June 2019, the State charged Williams-Holmes with several acts of domestic violence after he physically assaulted his cohabitating girlfriend, causing her to suffer pain and various injuries. (R. 1:1–6.) Williams-Holmes ultimately reached an agreement with the State in which he pled guilty to two counts of battery, one count of false imprisonment, and one count of bail jumping, each as a repeat offender. (R. 56:2, 11–12.)

At the ensuing sentencing hearing, the court imposed consecutive prison sentences for Williams-Holmes's two battery convictions, followed by consecutive probation terms for his remaining convictions. (R. 22:1, 3; 57:15–16.) The court ordered common supervision conditions for both Williams-Holmes's probation and extended supervision which, due to his history of domestic violence, included a condition that he not "reside with any member of the opposite sex without the permission of the Court, nor reside with any child who is not related to [him] by blood without the permission of the Court." (R. 22:2, 4; 24; 57:16.)

Postconviction proceedings

Williams-Holmes moved for postconviction relief, seeking an order modifying the above-referenced condition to require that he seek permission from the Department of Corrections (DOC)—not the circuit court—before he could reside with women or nonbiological children. (R. 40:1.) In support, he argued that, pursuant to Wis. Stat. § 301.03(3), DOC was responsible for "[a]dminister[ing] parole, extended supervision, and probation matters" and otherwise retained "exclusive control" over defendants placed on probation and extended supervision. (R. 40:2–3 (alteration in original) (citation omitted).)

The circuit court denied Williams-Holmes's motion in a written order and supporting memorandum. (R. 44; 46.) Referencing appellate authority that recognized a circuit court's authority to impose supervision conditions and even alter DOC supervision conditions deemed inconsistent with the court's sentencing objectives, the court rejected Williams-Holmes's argument. (R. 46:2.) The court also recounted its history of imposing the challenged condition, the actions of DOC that prompted the court's practice, and an anecdote from another defendant's case highlighting the need for the challenged condition given DOC's perceived failure to prevent

violent offenders from residing with helpless children. (R. 46:2–4.)

Williams-Holmes appeals. (R. 47.)

STANDARD OF REVIEW

Williams-Holmes challenges a sentencing court's statutory authority to order a specific condition of probation and extended supervision. That issue involves statutory interpretation, which presents a question of law that this Court reviews de novo. *See State v. Shoeder*, 2019 WI App 60, ¶ 6, 389 Wis. 2d 244, 936 N.W.2d 172.

ARGUMENT

The circuit court was authorized to impose conditions of probation and extended supervision that bar Williams-Holmes from residing with women or nonbiological children without the court's permission.

Due to his history of violent crimes, the circuit court ordered that Williams-Holmes not reside with women or nonbiological children during his terms of probation and extended supervision unless he first secures the court's permission. (R. 57:16.) This Court should affirm because, contrary to Williams-Holmes's position, the circuit court was permitted to order that condition. Williams-Holmes is not entitled to his requested sentence modification.

A. Legal principles

Wisconsin appellate courts recognize a "strong public policy against interference with the sentencing discretion of the trial court and sentences are afforded the presumption that the trial court acted reasonably." *State v. Echols*, 175 Wis. 2d 653, 681–82, 499 N.W.2d 631 (1993) (citation omitted).

At sentencing, barring a conviction for a crime for which probation is prohibited by statute or subject to a life sentence, a circuit court may withhold or impose a sentence and stay its execution, place a defendant on probation, and "impose any conditions which appear to be reasonable and appropriate." Wis. Stat. § 973.09(1)(a). Similarly, when imposing a bifurcated prison sentence, a circuit court may impose relevant conditions during the defendant's term of extended supervision. Wis. Stat. § 973.01(5).

Those conditions are not set in stone. A court may modify those terms and conditions of probation at any time prior to the probation period's expiration. Wis. Stat. § 973.09(3)(a). Likewise, a defendant sentenced to prison may petition his or her sentencing court to modify conditions of extended supervision. Wis. Stat. § 302.113(7m)(a). When revisiting supervision conditions, a court may even modify DOC rules deemed inconsistent with the court's sentencing objectives. *See State ex rel. Taylor v. Linse*, 161 Wis. 2d 719, 725, 469 N.W.2d 201 (Ct. App. 1991).

B. The challenged condition does not intrude upon DOC's statutory authority to administer probation and extended supervision.

Williams-Holmes does not challenge the circuit court's authority to impose conditions limiting his ability to live with women or unrelated children during the term of his probation and extended supervision. (Williams-Holmes's Br. 7.) He argues only that the condition requiring him to seek circuit court permission before residing with women or nonbiological children—the exact condition that this Court characterized as "appropriate" in *State v. Luckett*, No. 2009AP2679-CR, 2010 WL 1567169, ¶¶ 3, 11 (Wis. Ct. App. Apr. 21, 2010) (unpublished) (R-App. 3–5)—"invade[s] the DOC's exclusive statutory authority to administer probation and extended supervision." (*See* Williams-Holmes's Br. 10–12.)

The critical flaw in Williams-Holmes's argument is that nothing about the challenged condition permits the circuit court to *administer* probation or extended supervision. To illustrate, if Williams-Holmes flouts the court's condition and cohabitates with women or unrelated children, DOC—not the circuit court—will be charged with investigating and sanctioning that violation. Wis. Stat. § 301.03(3)(a). And if Williams-Holmes chooses to defy the challenged condition despite ongoing sanctions, it is again DOC—not the circuit court—that will be charged with pursuing revocation of his probation or extended supervision. Wis. Stat. § 301.03(3)(b)3.

Indeed, under no circumstances does the challenged condition permit the circuit court to administer Williams-Holmes's probation or extended supervision. The circuit court merely ordered a general prohibition of certain behavior—residing with women or nonbiological children—while conveying a willingness to later modify or relax that condition. Whether it preemptively hinted at doing so even before sentencing or later granted a probationer or prisoner's subsequent request to modify a condition as contemplated by Wis. Stat. §§ 302.113(7m)(a) and 973.09(3)(a), a court's inclination to revisit and grant exceptions to a condition previously imposed cannot possibly be deemed *administering* probation or extended supervision.

Williams-Holmes's flawed definition of "administering" undermines his reliance on *State v. Horn*, 226 Wis. 2d 637, 594 N.W.2d 772 (1999), and *State v. Burchfield*, 230 Wis. 2d 348, 602 N.W.2d 154 (Ct. App. 1999). To be clear, neither *Horn* nor *Burchfield* held that a circuit court cannot order a defendant released on probation or extended supervision to return to the court if he seeks relief from or modification of a condition that prohibits certain conduct.

Rather, in *Horn*, the supreme court simply decided a rather concise issue: "whether it is within the exclusive power of the judiciary to determine whether a defendant has

violated the court-imposed conditions of probation and whether probation should be revoked." *Horn*, 226 Wis. 2d at 642. To answer that question, the court examined the shared powers between the executive, legislative, and judicial branches as they relate to imposing and revoking a defendant's probation. *Id*. at 646–50.

Particularly relevant to Williams-Holmes's argument, while it ultimately observed that "the legislature has constitutional authority to offer probation as an alternative to sentencing, the judiciary has authority to impose probation, and the executive branch has the authority to administer probation," the supreme court stopped short of providing an exhaustive definition of what it meant to "impose" or "administer" probation, but it did provide some examples. *See id*. at 648–51.

For one, the supreme court recognized that a circuit court exercises its judicial constitutional function to impose a criminal disposition when it imposes probation and either withholds or stays a sentence. *Id*. at 649. The court also acknowledged that the judiciary's duties generally end after sentencing, where the executive branch's administrative duties of assessing whether a defendant's probation violations warrant revocation begin. *See id*. at 650. However, the court also recognized that those distinctions are not absolute; even after the general judicial adversary process ends and the executive, administrative process begins, a circuit court still maintains the authority to modify a defendant's terms of probation pursuant to Wis. Stat. § 973.09(3)(a). *Horn*, 226 Wis. 2d at 651.

Then, in *Burchfield*, this Court echoed *Horn*'s analysis when it determined that a defendant's revocation fell within the *administration* rather than the *imposition* of probation. *Burchfield*, 230 Wis. 2d at 352–54. But *Burchfield* said nothing about a circuit court's ability to require a defendant to reappear before the tribunal before it would modify or relax

a condition of probation or extended supervision. Rather, this Court merely recognized that Wis. Stat. § 973.10(2) granted DOC the authority to revoke a defendant's probation and that this grant of authority did not unduly burden or substantially interfere with the judiciary's sentencing powers. *Burchfield*, 230 Wis. 2d at 353–54.

Simply put, Williams-Holmes's argument that *Horn* and *Burchfield* precluded the circuit court from ordering the challenged condition in his case is unavailing. *Burchfield* has no bearing on Williams-Holmes's case since the challenged condition has nothing to do with probation revocation, and *Horn* reveals that a circuit court does not usurp DOC's authority to administer probation or extended supervision merely by revisiting conditions that it had previously ordered.

Similarly unconvincing are Williams-Holmes's attacks on the postconviction court's legal analysis. (Williams-Holmes's Br. 10–12.) First, he complains that *Linse* is inapposite because he is not attempting to "overturn" the challenged condition; he just wants to modify the condition so the court no longer has a say in whether he resides with women or nonbiological children. (Williams-Holmes's Br. 11.)

Williams-Holmes misses the point of the circuit court's *Linse* reference. The court did not suggest that *Linse* empowers sentencing courts to administer probation in violation of governing statutes. (*See* R. 46:2.) The court merely interpreted *Linse* to suggest that a circuit court may modify a probationer's conditions of supervision when it perceived a failure by DOC to take the necessary steps to effectuate the court's sentencing goals. (*See* R. 46:2, 4.) The court's logic makes sense; if a sentencing court wants to keep a defendant like Williams-Holmes in the community while protecting vulnerable women and children, DOC's complacency in imposing few or no rules to effectuate that aspiration would certainly undermine the court's wishes.

Here, evidently frustrated by what it perceived as a failure to protect women and children from violent offenders, the circuit court sought to counter DOC's supposed inaction and achieve its rehabilitative goals by imposing a reasonable safeguard. But the fact that DOC had not yet imposed a rule affirmatively permitting Williams-Holmes to reside with women or nonbiological children did not prevent the court from ordering or modifying appropriate conditions when it found that DOC's inaction frustrated its rehabilitative goals. Indeed, this Court recognized the circuit court's ability to do just that. *See Linse*, 161 Wis. 2d at 725.

Turning to his second point, Williams-Holmes criticizes the circuit court's reliance on *State v. Gray*, 225 Wis. 2d 39, 590 N.W.2d 918 (1999), asserting that "*Gray* does not purport to confer on circuit courts the authority to administer a condition of probation after it has been ordered." (Williams-Holmes's Br. 11.) But the circuit court never contended or even implied that *Gray* conferred such authority; it merely referenced *Gray* for the principle that a court may modify a probationer's conditions of supervision at any time. (R. 46:2.) While Williams-Holmes does a commendable job of knocking down his straw man argument, his attack to the circuit court's reliance on *Gray* does not undermine the conclusion that the challenged condition was sustainable.

Finally, turning to his third point, Williams-Holmes points out that the State conceded an analogous argument in a different appeal involving a different defendant. (Williams-Holmes's Br. 9–10.) Even assuming that it is appropriate for a litigant to bolster his argument with an opposing party's brief from an appeal that was, incidentally, decided by a summary disposition order that cannot be cited as precedent or authority, *see* Wis. Stat. § (Rule) 809.23(3)(a)–(b), the fact remains that a circuit court does not *administer* probation or extended supervision by barring a defendant

from residing with women or nonbiological children without the court's authorization.

In sum, the circuit court maintained the wide discretion to impose conditions of supervision aimed at protecting women and children from Williams-Holmes's violent tendencies. It did just that when it ordered that he not reside with women or nonbiological children unless he first satisfied the court that a relaxed supervision condition was warranted. Because Williams-Holmes has not shown that the challenged condition improperly intruded upon DOC's authority to administer probation or extended supervision, the circuit court was correct to reject his request for sentence modification, and this Court should affirm.

CONCLUSION

This Court should affirm the judgment of conviction and the order denying postconviction relief.

Dated this 4th day of October 2021.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,145 words.

Dated this 4th day of October 2021.

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 4th day of October 2021.

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