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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP809-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUNIOR L. WILLIAMS-HOLMES,

Defendant-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

1. Can a circuit court use its statutory authority to modify conditions of probation and extended supervision to regulate the day-to-day affairs of individuals on supervision, contrary to statutes conferring on the Department of Corrections the exclusive authority to administer probation?

The circuit court imposed the condition of probation and extended supervision on the defendant, requiring him to get court permission before living with women or unrelated children.

The court of appeals affirmed, but held that the circuit court could only grant or withhold permission for living with particular women or children through the statutory processes for modifying conditions of probation or extended supervision, not through informal communication with the agent or defendant, as the circuit court apparently intended.

This Court should grant review and hold that a circuit court may not utilize its authority to modify conditions of supervision to circumvent the Department of Corrections' authority to administer probation and extended supervision.

CRITERIA FOR REVIEW

A circuit court has exclusive statutory authority to set and modify terms of probation and extended supervision. Wis. Stat. §§ 302.113(7m), 973.01(5), 973.09(1)(a) & (3)(a). The Department of Corrections (DOC) has exclusive statutory authority to administer those conditions. Wis. Stat. § 301.03(3). This case asks the court to interpret these statutes and clarify the relative authority of the circuit court and the DOC over individuals on probation and extended supervision.

Here, the circuit court ordered that Mr. Williams-Holmes could not live with any women or unrelated children without "permission of the Court." (57:16; App. 27.) The circuit court intended to decide on a case-by-case basis which women and unrelated children Mr. Williams-Holmes could live with. (64:3-5; App. 20-22.) This Court should grant review to consider whether the circuit court may rely on its authority to modify terms of probation and extended supervision to effectuate this condition and decide which women and children Mr. Williams-Holmes can live with, or whether the circuit court has improperly usurped the DOC's authority to administer supervision with this condition.

The court of appeals' published opinion erroneously permits a circuit court to make itself the de facto probation agent. It invites circuit courts to impose invasive conditions prohibiting defendants from all types of lawful conduct, then requiring the defendant to return to the circuit court to amend the

condition on a situation-by-situation basis, instead of permitting the DOC to administer the supervision.

Although circuit courts have broad discretion to order terms of supervision, the only issue in this case is one of statutory interpretation: whether the circuit court possessed statutory authority to make day-to-day decisions about supervision conditions. *State v. Williams-Holmes*, No. 2021AP809-CR, unpublished slip op., ¶12 (WI App June 15, 2022).

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. (57:15-16.) The court withheld sentence on the other two counts, and placed Mr. Williams-Holmes on three years of consecutive probation. (57:16.)

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." (57:16.) That condition is reflected on the judgments of conviction. (22:2, 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. (40.) The motion argued that Wis. Stat. § 301.03(3) grants the 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. (44; 45; App. 17-21.) 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. (45:3-4; App. 20-21.)

The court of appeals affirmed, but recognized that the informal process of granting or withholding permission to live with particular men or women "would be unlawful as it would amount to the court usurping the department's statutorily granted authority to 'administer' extended supervision and probation 'matters.'" *Williams-Holmes*, No. 2021AP809-CR, unpublished slip op., ¶17. Nevertheless, the court of appeals affirmed, with the caveat that "permission" to live with women or unrelated children could only be sought through the

statutory processes for modifying terms of probation or extended supervision. *Id.*, ¶20.

Mr. Williams-Holmes moved the court of appeals to reconsider its decision, arguing that even if the statutory processes for modifying supervision were followed, the circuit court was still impermissibly "administering" supervision if it was managing the specific women and children that he could live with. The motion also noted the impracticalities of going through the modification processes anytime Mr. Williams-Holmes sought to live with someone new. The court of appeals denied reconsideration.

ARGUMENT

I. This Court should grant review to clarify the statutory limits on a circuit court's authority to administer probation.

This Court should grant review to clarify the relative authority of the circuit court and the DOC over individuals on probation and extended supervision. The court of appeals' published decision significantly shifts authority from the DOC to the circuit court to make day-to-day decisions about a person's term of probation or extended supervision. This Court's review is appropriate to interpret the pertinent statutes and clarify the limits of circuit courts' authority in light of statutes conferring on the DOC the exclusive right to administer supervision.

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 statutes divide authority over probation and extended supervision between the DOC and the circuit court.[1] The circuit court is authorized to impose conditions of supervision, Wis. Stat. §§ 973.01(5),[2] 973.09(1)(a),[3] and to modify those conditions. Wis. Stat. §§ 302.113(7m),[4] 973.09(3)(a).[5]

Outside of those limited functions, the statutes vest the DOC with all control over supervisees. "Imposition of probation shall have the effect of placing the defendant in the custody of the [DOC] and shall subject the defendant to the control of the department . . . ." Wis. Stat. § 973.10 (1). The DOC is

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[1] This case involves an identical condition of probation and extended supervision. This petition will generally refer to them collectively as a term of supervision.

[2] "Whenever the court imposes a bifurcated sentence under sub. (1), the court may impose conditions upon the term of extended supervision." Wis. Stat. § 973.01(5).

[3] "The court may impose any conditions [of probation] which appear to be reasonable and appropriate." Wis. Stat. § 973.09(1)(a).

[4] "Except as provided in par. (e), a person subject to this section or the department may petition the sentencing court to modify any conditions of extended supervision set by the court." Wis. Stat. § 302.113(7m)(a).

[5] "Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof." Wis. Stat. § 973.09(3)(a).

responsible for "[a]dminister[ing] parole, extended supervision, and probation matters . . . ." Wis. Stat. § 301.03(3).

This Court has recognized the courts' limited role after an offender is placed on supervision. "Whether a 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." *State v. Horn*, 226 Wis. 2d 637, 650, 594 N.W.2d 772 (1999) (internal punctuation omitted).

The court of appeals has similarly held that "the executive branch has *exclusive statutory authority to administer and to revoke probation*." *State v. Burchfield*, 230 Wis. 2d 348, 349, 602 N.W.2d 154 (Ct. App. 1999) (emphasis added).

The court of appeals' published decision conflicts with the plain statutory text—and the courts' interpretation of that text—by permitting circuit courts to manage the day-to-day functions of (i.e. to administer) supervision.

Approving or denying a person's request to live with a specific person isn't a "modification" of the condition. It doesn't change or alter the condition. *See State v. Fisher*, 2005 WI App 175, ¶10, 285 Wis. 2d 433, 702 N.W.2d 56. Rather, it implements—that is, administers—the condition.

Even when the statutory process for modifying supervisory conditions is followed, these modifications still involve the "administration" of probation. The circuit court is engaging in "situation-by-situation oversight . . . of who an offender may or may not reside with." *Williams-Holmes*, No. 2021AP809-CR, unpublished slip op., ¶16. Even as interpreted by the court of appeals, the circuit court alone decides which specific women and children Williams-Holmes can and can't live with. The DOC has no say. This is contrary to the statutory language conferring on the DOC the authority to administer probation.

Whether the circuit court has overstepped its authority doesn't depend on whether Williams-Holmes can change who he lives with by informally contacting the court (through his agent or an attorney), or if he has to formally file a petition to modify the terms of probation or extended supervision. Under either scheme, the circuit court is seeking to administer Williams-Holmes' everyday living arrangements. Though Wis. Stat. § 302.117(7m) and § 973.09(3)(a) authorize the circuit court to modify conditions of supervision, the circuit court cannot use that statutory authority as a weapon to invade the DOC's exclusive authority to administer probation and extended supervision.

The court of appeals' opinion invites circuit courts to impose any number of excessively invasive conditions, with the caveat that the circuit court will modify the condition as necessary. For example, a circuit court could impose a condition that the defendant live with no one. If the defendant wants to live with someone, the defendant would have to

petition the court to modify the condition to allow living with a specific person. If the court approves, the condition would be modified to indicate that the defendant may live with that specific person. Adding or changing the person(s) with whom the defendant may reside would require a new petition to modify. The judge could do this with any number of other conditions: impose a blanket prohibition and make the defendant or DOC petition to modify. The court could order the defendant to engage in no rehabilitative programming, or to not seek any employment, then require the defendant to ask the court to modify the condition to permit specific programs, or to work with a specific employer. And with that, the judge has effectively become the probation agent.

There is a line between modifying and administering conditions of supervision. The court of appeals' published opinion impermissibly shifts too much authority away from the DOC, contrary to the statutes. This Court should grant review to provide clarity to circuit courts and supervision agents about where that line exists, and about what conditions of supervision may properly be imposed.

The court of appeals' published opinion also ignores the impracticality of shifting to circuit court's the administration of supervisory conditions. For example, a defendant can petition to modify a condition of extended supervision only once a year. Wis. Stat. § 302.113(7m)(e)2. Therefore, if the circuit court modifies its condition to allow Mr. Williams-Holmes to live with a particular woman in January, he would be unable to file another petition if, say, her child from another relationship needed to move in with

them two months later, or if he decided to move in with his mother. Williams-Holmes would either have to hope that his agent filed a new petition on his behalf, Wis. Stat. § 302.113(7m)(d), or potentially have to find a new home, even if the judge were willing to allow the new living arrangement. And that new living arrangement couldn't be with another woman or unrelated child until he could file another petition in a year.

Pro se defendants would have to navigate the statutory processes for modifying conditions. They would have to figure out how to put enough information in a petition to get a hearing, and they would potentially have to call witnesses and introduce testimony. The DOC and the State could potentially call their own witnesses to testify about the requested modification. And victims would likely have a right to appear and be heard. After ruling on the petition, the defendant (or DOC) could potentially appeal the decision. Wis. Stat. § 302.113(7m)(d). Rather than engage in this cumbersome process, the statutes envision that the DOC exercise its authority to make these day-to-day decisions about managing offenders.

The statutes confer on the DOC the exclusive authority to administer probation. The court of appeals' published decision invites circuit courts to usurp that authority through the processes for modifying supervisory conditions. This Court should grant review to consider the relative authority of the circuit courts and DOC to administer and modify supervisory conditions. This important question of statutory interpretation is relevant to any case where a court imposes probation or extended supervision.

CONCLUSION

For the reasons stated above, this Court should grant review of the court of appeals' decision.

Dated this 4th day of August, 2022.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in §§ 809.19(8)(b) and (bm) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 2,332 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, including the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 4th day of August, 2022.

Signed:

_____

DUSTIN C. HASKELL
Assistant State Public Defender