STATE OF WISCONSIN

IN SUPREME COURT

No. 2022AP2153-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THATCHER R. SEHRBROCK,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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CRITERIA FOR REVIEW

Petitioner Thatcher R. Sehrbrock faced a significant prison sentence upon his third felony conviction, and the circuit court, with some reluctance, ordered probation, noting the facts that he was 18 and had a severe and well-documented alcohol addiction.

Sehrbrock unsuccessfully challenged the court's requirement of an ignition interlock device (IID) as a condition of his probation, both in a postconviction motion and in an appeal. He now petitions for review, asking this Court to change the legal standard for a lawful condition of probation and hold that in addition to being "reasonably related" to rehabilitation and public protection,[1] it must also be "related to the crime of conviction or otherwise tailored to the defendant's recent conduct." (Pet. 9.) He also asks this Court to make new law holding that a condition of probation, like a sentence, can be vacated as unduly harsh or excessive, and that the condition at issue here must be vacated on that ground. (Pet. 16.)

As an initial matter, it appears that review is not needed because the condition in question is no longer in effect. While Sehrbrock's appeal was pending, his probation was revoked and he was sentenced to prison.[2] Petitioner has not provided the transcript of that sentencing after revocation; the documents available to the State do not show that the IID requirement is a condition of Sehrbrock's extended supervision. (Resp-App. 2–3, 4.)

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[1] *State v. Miller*, 2005 WI App 114, ¶11, 283 Wis. 2d 465, 701 N.W.2d 47 ("the dual goals of supervision" are rehabilitation and public protection).

[2] *State v. Thatcher R. Sehrbrock*, Dodge County Case No. 2021CF156, available at 2021CF000156 Case Details in Dodge County (https://wcca.wicourts.gov).

Even if the condition has not been rendered moot by the subsequent revocation and new sentence, this case does not warrant review.

Sehrbrock argues that review is warranted "under Wis. Stat. § [(Rule)] 809.62(1r)(c)2-3," and argues that "whether a condition of probation is reasonably related to the defendant's rehabilitation or protection of the public if it is not tailored to the crime of conviction or the defendant's past behavior—a question which is not factual in nature, has statewide impact, and is likely to recur unless resolved." (Pet. 4.)

There's no basis for granting review of this discretionary ruling. Such a ruling is proper if the court "relies on the relevant facts in the record and applies the proper legal standard to reach a reasonable decision."[3] As the court of appeals noted, precedent is clear that the standard is a reasonableness standard and that conditions of probation do not have to directly relate to the crime of conviction. (Pet-App. 15–16.) It rejected Sehrbrock's argument to the contrary as unsupported by authority and contrary to established law:

> To the extent that Sehrbrock means to argue that a condition of probation must directly relate to the crime for which a defendant is sentenced, *he fails to cite authority for this premise, either from this jurisdiction or any other*. Indeed, this court has rejected this argument and upheld conditions of probation not directly related to the offense for which the defendant is convicted if the conditions are otherwise valid.

(Pet-App. 15 (emphasis added).)

The Petition omits highly relevant facts from the record that undermine its argument about the reasonableness of the IID condition. For example, it asserts that Sehrbrock was not

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[3] *State v. Edmunds*, 2008 WI App 33, ¶8, 308 Wis. 2d 374, 746 N.W.2d 590.

the driver of the car used in the underlying crime of conviction, and that the PSI and letters filed before his April 2022 sentencing showed that "Mr. Sehrbrock was no longer consuming alcohol." (Pet. 14.) But as the court of appeals noted, the court was not required to believe that. (Pet-App. 19.) When he was sentenced in this case, he had a pending charge for hit-and-run in another county. (Pet-App. 12.) After sentencing in this case, and before the hearing on his postconviction motion, Sehrbrock reported to serve his sentence at the jail so intoxicated that he "had to be sent to the hospital by ambulance and had on another occasion been caught with drugs." (Pet-App. 8.)

The circuit court's exercise of discretion in ordering probation rather than prison in this case, and in tailoring conditions of probation to the needs Petitioner presented was highly factual in nature. Further, even under the proposed legal standard offered in the Petition, that requirement *was* based on "the defendant's past behavior"—namely, as the record makes clear, his undisputed and severe alcoholism that Sehrbrock himself directly correlated to his extensive criminal activity (Pet-App. 4–6), as well as facts known to the circuit court about his driving, including the pending charge for hit-and-run (Pet-App. 17). Further review of the circuit court's fact-intensive discretionary ruling is not appropriate.

The dissent was unpersuaded by the majority's conclusion that the circuit court's decision should be upheld as a proper exercise of discretion. It concluded that "[t]he IID probation condition in this case is simply not related to Sehrbrock's rehabilitation or protecting the public." (Pet-App. 28.) It reasoned that an IID probation condition can be valid only where the crime of conviction involved intoxicated driving, or where there is proof that a defendant drove while intoxicated. (Pet-App. 28.) That isn't the law. The dissent's narrow reading of the circuit court's authority is inconsistent with its responsibility to protect the public. Based on the facts

in this record, the circuit court did not erroneously exercise its discretion when it concluded that the condition was reasonably related to Sehrbrock's rehabilitation and the protection of the public.

CONCLUSION

This Court should deny the Petition.

Dated this 18th day of September 2024.

Respectfully submitted,

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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 the Wisconsin Supreme Court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 18th day of September 2024.

Electronically signed by:

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this petition or response is 927 words.

Dated this 18th day of September 2024.

Electronically signed by:

Sonya K. Bice
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