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CLERK OF COURT OF APPEALS
OF WISCONSIN**State of Wisconsin****Court of Appeals****District I****Appeal No. 2024 AP 001497-CR**

State of Wisconsin

Plaintiff-Respondent,

V

Benny E. Burgos,

Defendant-Appellant.

Brief and Appendix of Defendant-Appellant

**Appeal from Decision and Order Denying Motion to Reconsider and Reverse Order
Entered on July 2, 2024 in the Milwaukee County Circuit Court The Honorable Paul R.
Grunsven Trial Court Case No. 14 CF 004879 and ~~14 CF 005137~~**

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Issues Presented for Review

I. Whether the court of appeals has jurisdiction to review the circuit court's July 2, 2024 Order and Decision denying Motion to Reconsider and Reverse Order

II. Whether Burgos was entitled to release following the successful completion of ERP pursuant to Wis. Stat. 302.05 (3)(a)(2), 302.05 (3)(c).

The trial court answered: No

III. Whether the DOC had the authority under Wis. Stat. 302.05 (3)(a)(2) to authorize Burgos' enrollment and participation in ERP, and subsequent release following the successful completion of ERP.

The trial court answered: No

Statement of Publication

The appellant Burgos believes the court's opinion in this case will meet the criteria for publication as it will clarify the laws, statutes, and interpretation of the ERP.

Statement on Oral Argument

The appellant does not request Oral Argument in so far as he believes the briefs will sufficiently explicate the facts and law necessary for this court to decide the issues present.

Statement of the Case/facts

On April 11, 2016 Judge Timothy Witkowiak sentenced the defendant-appellant (Burgos) on two cases. Case No. 14CF004879, and Case No. 14CF005137, Burgos pled to both cases. In Case No. 14CF004879, the court sentenced Burgos to Four (4) years initial confinement, followed by Four (4) years of extended supervision with eligibility for ERP after having served four years of confinement. In Case No. 14CF005137, the court sentenced Burgos to Two (2) years initial confinement and Two (2) years extended supervision with eligibility for ERP. See (ROA: 27:1-2)

Both sentences in Case No. 14CF004879, and 14CF005137 were required to be served consecutively for a total of Six (6) years initial confinement to be followed by Six (6) years of extended supervision. On Case No. 14CF004879, Burgos served the complete total of Four (4) years initial confinement. Following the Four (4) years, Burgos began to serve the Two (2) years of initial confinement on Case No. 14CF005137.

Burgos was in custody from April 11, 2016, until September 14, 2020. Burgos did not receive the benefit of ERP on Case No. 14CF004879. Burgos received the benefit of ERP on the second consecutive sentence in Case No. 14CF005137. See (ROA: 42:1 Appendix (App. Exhibit (Exh) C headnote 1)

On September 7, 2020, the Department of Corrections (DOC) notified the court that Burgos had successfully completed the ERP program. On September 8, 2020 Judge J.D. Watts signed an order in Case No. 14CF005137 authorizing Burgos' release to extended supervision. On September 14, 2020 Burgos was released. On June 3, 2022 Burgos was returned to DOC custody, having his extended supervision revoked. See App. Exh. C

On August 14, 2023 Burgos began participation in ERP based on DOC's expansion. At no time before, during, or following Burgos' participation of ERP did the DOC inform him that it was a possibility that his completion of ERP wouldn't result in Burgos release from prison. In fact Burgos was informed that based on the expansion of ERP he would be released following his completion of ERP. It is Burgos' position that had he been informed that his successful completion of ERP wouldn't result in his release Burgos wouldn't have taken the ERP due to the expansion.

On December 29, 2023, the DOC informed the court that Burgos had completed the ERP program a second time in Case No. 14CF004879, and requested the court to sign an order authorizing Burgos' release. See (ROA: 40:1, App. Exh. A)

The court declined to sign the order on January 4, 2024. See App. Exh. A. By letter dated January 8, 2024, the DOC requested that the court reconsider its decision. (ROA: 41: 1-2 App. Exh. B) On January 26, 2024, the court entered a decision and order denying DOC's request for reconsideration. See (ROA: 42:1 1-3, App. Exh. C.)

On June 26, 2024, attorneys for Burgos filed a notice of appearance in Case No. 14CF004879. See (ROA: 45:1) On June 26, 2024, Burgos through his attorneys filed a motion to reconsider and reverse the court's denial of Burgos' release upon successful completion of ERP. See (ROA: 46:1-6)

On July 2, 2024, the court entered a decision and order denying counsel's motion to reconsider and reverse order. See (ROA: 52:1-2 App. Exh. D.) On July 26, 2024, Burgos Pro-se filed a notice of appeal challenging the trial court's decision and order which is the subject of this appeal. See (ROA: 53: 1-2).

This court should be aware that this brief was prepared by a Jailhouse lawyer that is a paralegal to assist Pro se litigants during their litigation legal proceedings.

Arguments

I. The court of appeals has jurisdiction to review the circuit court's July 2, 2024 Order and Decision denying Motion to Reconsider and Reverse Order.

The question before this court is whether the court of appeals has jurisdiction to review the circuit court judge's July 2, 2024 decision and order denying Burgos's retained attorneys' motion to Reconsider and Reverse order from the circuit court's January 4, 2024 decision and order denying DOC request to amend Burgos' JOC and DOC's reconsideration letter decision and order January 26, 2024. The motion filed by Burgos' retained legal counsel Michael F. Hart (Hart) and Morgan L. Minter (Minter) is at issue here. To address this question this court should consider the procedural background which led up to the July 2, 2024 Decision and Order which is the subject of this appeal.

Following Burgos' successful completion of the ERP the DOC invoked the circuit court's jurisdiction pursuant to Wis. stat. 973.01, 302.05(3)a(2), 302.05(3)(c), seeking an amendment to Judgement of Conviction (JOC) and order-ERP in case number 14CF4879 on the DOC standardized 2259 form authorizing Burgos' release see (ROA:40:1 App. Exh A).

On January 4, 2024 the court declined the DOC's request stating "defendant's extended supervision term has been revoked pursuant to section 302.113(9)(b) Wisconsin Statutes, the defendant must serve the entire period of reconfinement specified in the revocation order." Following the circuit court judge's denial of the DOC's request for the court to amend Burgos' JOC, Brandie K. Wagner, Corrections Program Supervisor of the DOC at Prairie Du Chien Correctional Institution sent the judge a letter requesting that the court reconsider its denial of release of Burgos. See (ROA: 41: 1-2, App. Exh. B) On January 26, 2024 the circuit court judge entered a Decision and Order denying DOC's request for reconsideration. See (ROA: 42: 1-3, App. Exh. C)

It is Burgos' position that he was not the author or a knowing party-appellant to Brandie K. Wagner, Corrections Program Supervisor's letter for reconsideration, See App. Exh. B. The DOC's letter of reconsideration was not used to extend the time to appeal from a judgement or order when that time has expired, moreover Brandie K. Wagner's letter did not present the same issues as those determined in the order sought to be reconsidered.

Using the standardized DOC 2259 form, DOC's initial request, sought to invoke the circuit court's jurisdiction pursuant to Wis. Stat. 973.01, 302.05(3)a(2), 302.05(3), requesting that the court amend Burgos' JOC following the successful completion of ERP in Case No. 14CF004879.

Subsequently, the DOC's letter for reconsideration presented different issues other than those determined in the circuit court's decision not to amend Burgos' JOC. The DOC's reconsideration letter was about the DOC's expansion of ERP allowing multiple completions of ERP for the same case. Therefore **Silverton Enters., Inc. v. Gen. Cas. Co.**, 143 Wis, 2d 661, 665, 422 N.W. 2d 154 (Ct. App. 1988) does not apply.

The 90 days notice of appeal expiration time limits of the circuit court judge's decision to decline DOC's request to amend Burgos' JOC does not apply to Burgos, but to the DOC. Moreover, the 90 days notice of appeal time limits to the circuit court's judges January 26, 2024 Order and Decision denying the DOC's letter for reconsideration applies to the DOC not Burgos because Burgos was not the author of DOC's request to the court to amend Burgos' JOC, and Burgos was not the author or knowing party-appellant to the DOC's letter for reconsideration.

The January litigation was initiated and sustained by the DOC, rather than Burgos. Burgos was not made aware of the DOC's litigation until Burgos' wife seen it on CCAP sometime in February. Moreover, Burgos was not aware of the 90 day time limits from a judgment or decision and order or when the time limits has expired for an appeal, that is why he retained legal representation in this case.

During the court's analysis, the focus should be specifically on Burgos' retained legal counsel Hart and Minter. This procedural history is unique because Burgos retained counsels litigation was initiated June 26, 2024, 62 days beyond the April 25, 2024 expiration date to file a notice of appeal of the circuit court's Decision and Order denying DOC's request to amend the JOC on January 4, 2024 and DOC's request for reconsideration that was denied on January 26, 2024.

Either an evidentiary hearing or order by the court of appeal to have both Hart and Minter answer to this court may be necessary based on retain counsel's representation to Burgos which may have violated the Supreme Court's rules of professional conduct between attorneys and clients, moreover, both Hart and Minter are directly responsible for the legal landscape of these appeal proceedings at this time.

Sometime in late February or March 2024 Burgos and his wife contacted Hart and Minter concerning the circuit court's January 4, 2024 decision to deny amending Burgos' JOC and the January 26, 2024 denial of the DOC's letter of reconsideration. Burgos asked what could be done and where do we go from here. Hart and Minter's response was that Burgos had to fork over \$2,000.00 for the appeal of the circuit court's decisions. Subsequently, Burgos' wife initially gave the attorneys \$1,000.00 in April 2024, and informed the attorneys that that was all they could afford. The attorneys informed Burgos that no action would be taken by them on the case until the \$2,000.00 was paid in full. Burgos' wife had to scrape up the rest of the money.

The appeal process that was discussed was that Hart and Minter had to write a formal letter to Judge Van Grunsven asking him to reconsider and reverse order. Burgos was able to get the remaining \$1,000.00 and paid the attorneys the rest of the money in June 2024.

However, neither Hart nor Minter specifically specified to Burgos what the circuit court was to reconsider and reverse, whether it was the circuit court's decision and order denying the DOC's request to amend the JOC authorizing his release and conversion of remaining time to extended supervision entered on January 4, 2024 or the court's decision and order denying the DOC's letter for reconsideration entered on January 26, 2024. However, rather than sending a letter to the circuit court judge, the attorneys filed a motion. See (ROA: 46:1-6)

In any case, the law is not clear on whether Burgos' attorneys could legally file a motion for reconsideration of the circuit court's denial of the DOC's request to amend Burgos' JOC or the circuit court's denial of DOC's motion for reconsideration that happened in January 2024, back to the circuit court in June 2024 . This is a question that the court must address during their analysis.

The circuit court's denial of the DOC's request to amend Burgos' JOC happened on January 4, 2024 and the circuit court's denial of the DOC's letter for reconsideration happened on January 26, 2024. Therefore, this court's analysis begins and starts with Wis. Stat. 808.03(1) initiating an appeal as

of right to the court of appeals. Initiating an appeal to the court of appeals as of right is governed by Wis. Stat. 808.04(1), and the 90 day appeal period applies if it's a civil matter. Moreover, to toll the time for appeal in a civil matter, the motion for reconsideration must be filed within 20 days of the order. See Wis. Stat. 805.17(3)

The question before this court is whether the litigation initiated by the DOC to the circuit court was a civil matter governed by Wis. Stat. 808.03(1), 808.04(1), and 805.17(3).

The next question is whether the circuit court's January 4, 2024 denial of the DOC's request to amend Burgos' JOC was a final order from which an appeal as of right could be taken, and whether the 90 day appeal period applied, and whether the DOC's letter for reconsideration tolled the 90 day time limits for an appeal to this court of the January 26, 2024, circuit court judge's order denying DOC's request for reconsideration. See (ROA: 42: 1-3, App. Exh. C).

In any case, Burgos did not initiate litigation, the DOC did so, Burgos was not knowingly aware of the litigation until after the process was completed. Now the question becomes whether Burgos' retained attorneys was and should have been aware of the laws governing appeals under Wis. Stat. 808.03(1), 808.04(1), and 805.17(3) following the circuit court's January 4, 2024 denial of the DOC's request to amend Burgos' JOC and the circuit court's denial of the DOC's letter for reconsideration that happened on January 26, 2024.

The question before this court is whether Burgos' retained attorney's motion to the circuit court to reconsider and reverse, was 62 days well beyond the time limits governing the times to initiate appeals under Wis. Stat. 808.03(1), 808.04(1), and 805.17(3) of the circuit court's January 4, 2024 order and denial of the DOC's request to amend Burgos' JOC and the circuit court's order and denial of the DOC's letter for reconsideration that happened on January 26, 2024. This will determine whether the court of appeals has jurisdiction over the circuit court's July 2, 2024 Decision and Order denying Burgos' retained attorneys motion to reconsider and reverse.

The next question before this court is whether retained attorneys should have filed a notice of appeal to the court of appeals, of the circuit court's January 4, 2024 order and denial of the DOC's request to amend Burgos' JOC and the circuit court's order and denial of the DOC's letter for reconsideration that happened on January 26, 2024 before the 90 day time limits expired, rather than retained attorneys filing a motion to the circuit court to reconsider and reverse the circuit court's January 2024 decisions and orders. There is no question that the circuit court's order and denial of the DOC's letter for reconsideration that happened on January 26, 2024, was a final order from which an appeal as of right could be taken, and the 90 day appeal period applied

If Burgos' retained attorneys refused to initiate an appeal of which they were instructed to do, and which they were paid to do, to this court before the 90 day time period expired following the circuit court's January 4, 2024 denial of the DOC's request to amend Burgos' JOC and the circuit court's denial of the DOC's letter for reconsideration that happened on January 26, 2024, and deliberately took his \$2,000.00 after the time any legal action could be legally taken in this case, both Minter and Hart clearly violated the Supreme Court's rules of attorney professional conduct.

Moreover, it is unheard of that a motion for reconsideration would be filed after a motion (letter) for reconsideration has already been filed. The obviously legal progression following the denial of a motion and motion for reconsideration from the circuit court is an appeal to the appeals court.

In any case, Burgos maintains the position that this court has jurisdiction to hear this appeal according to Burgos' retained attorneys representations to him. Moreover, the only reason why Burgos retained attorneys did not initiate this appeal to the court of appeals on this matter is because Burgos didn't have anymore money to give them. But, instead, referred him to someone that wanted \$30,000. In any case, Burgos was informed by retained attorneys that he could appeal the circuit court's July 2, 2024 Decision and Order denying motion to reconsider and reverse to the court of appeals.

Therefore this court should consider the unique procedural history during the court's analysis as this court answers the questions about its jurisdiction over the circuit court's July 2, 2024 order denying a motion to reconsider and reverse the circuit court's January 4, 2024 and January 26, 2024 decision and order.

This court should also answer the question of whether this court even has jurisdiction to review on appeal the circuit court's January 4, 2024, January 26, 2024 decision and order, and the circuit court's July 2, 2024 order denying a motion to reconsider and reverse because Burgos's legal position may be destroyed due to the lawyers failure to act with reasonable promptness to file a timely notice of appeal.

II. Burgos was entitled to release following the successful completion of the Earned Release

Program (ERP) pursuant to Wis. Stat. 302.05 (3)(A)(2) during the reconfinement portion of the sentence based on DOC expansion of ERP.

Standard of Review

When the facts of the case are undisputed, we address only questions of law-primarily questions of statutory interpretation and constitutional law. We decide questions of statutory interpretation de novo, See **Moran v Wisconsin Department of Justice**, 2019 WI App. 38 @12.

The facts are undisputed, Burgos was sentenced to Four (4) years initial confinement, followed by Four (4) years of extended supervision on Case No. 2014CF004879. Moreover, the sentencing court found that Burgos was eligible for ERP after serving Four (4) years of that sentence.

However, Burgos did not get the opportunity to participate in the ERP on Case No. 14CF004879, because he had to serve a total of Four (4) years, and had to serve a two (2) year sentence that was consecutive to the Four (4) year sentence.

When Burgos returned to prison, after he was revoked, the DOC determined that Burgos should be provided the opportunity to enroll in the ERP again due to the DOC expansion of ERP for multiple completions of ERP for the same case. See (ROA: 41: 1-2, App. Exh. B)

Once Burgos began participation of ERP on August 14, 2023, and successfully completed ERP on December 29, 2023, the DOC invoked the circuit court's authority to amend Burgos' Judgement of Conviction (JOC) and ordered Burgos' release, and that the remaining time be converted to extended supervision. See (ROA: 40: 1, App. Exh. A.)

In opposition to the DOC's request to amend the JOC, and order release, due to Burgos' successful completion of ERP, the court concluded and stated:

"The defendant's extended supervision term has been revoked. Pursuant to Section 302.113 (9)

(b) Wisconsin statutes, the defendant must serve the entire period of confinement time specified

in the revocation order" See (ROA: 40: 1, App. Exh. A)

It is Burgos' position that he was entitled to be released following the successful completion of ERP on Case No. 14CF004879, because the sentencing court deemed Burgos eligible for participation in the ERP during sentencing on April 11, 2016. Pursuant to Wis. Stat. 302.05 the ERP program is a rehabilitation oriented program that offers early release upon successful completion of treatment.

The court made Burgos eligible for ERP after having served Four (4) years of confinement on Case No. 14CF004879. Burgos never had the opportunity to successfully complete ERP on Case No. 14CF004879, until he became reincarcerated on 06/03/2022 on Case No. 14CF004879.

The trial court failed to authorize Burgos' release following the successful completion of ERP on the basis that Burgos' extended supervision term had been revoked. Concluding that pursuant to Section 302.113 (9)(b) Wis. Stats. Burgos must serve the entire period of reconfinement time. See (ROA: 52:1 App. Exh. D.)

The trial court's rationale is premised on the court's interpretation of the statute 302.113 (9)(b) that states:

"A person who is returned to prison after revocation of extended supervision shall be incarcerated for the entire period of time specified by the order under par (am)"

The trial court further held, if the legislature intended inmates serving a term of reconfinement ordered under section 302.113 (9)(am) to be released upon successful completion of ERP it could have expressly granted the circuit court with that authority under Section 302.113 and/or 302.05. Moreover, the trial court concluded that the DOC's request to the court exceeded the authority granted by the legislature. See (ROA: 52: 2, App. Exh. D)

It is Burgos' position that the DOC determined that he was a suitable candidate for ERP during his term of reconfinement, on Case No. 14CF004879 because the trial court had deemed Burgos eligible for ERP during that sentence, and the fact that Burgos had not taken ERP during the confinement portion of that sentence.

This is a matter of interpretation of the statutes regarding the trial courts that's being asked to grant release to inmates that has successfully completed the ERP program during the reconfinement portion of their sentence and the DOC's interpretation of the statute to expand the ERP and enroll participants with the expectations that following successful completion, the trial courts will release inmates. Question about the interpretation and application of a statute to a set of facts is a question of law that the court of appeals review de novo **Donaldson v Town of Springs Valley**, 2008 WI 61 @6.

This is a case of first impressions, also this case is novel, in that the DOC has interpreted the statutes to expand the ERP for multiple completions for the same case, where inmates did not have the opportunity to participate in ERP on that case during the initial confinement portion of their sentence.

Now this court must confront the legal implications that other inmate(s) have been given ERP for a second time during the reconfinement portion of their sentence. Following the successful completion, the DOC has invoked the trial court's authority to authorize release, and the trial Judge's have granted the DOC's request releasing inmates such as Mario Wheeler, Cameron Lane and Lawrence Colton. Mr. Colton and Burgos successfully completed ERP together in the same group on December 29, 2023 at Prairie Du Chien Correctional Institution during the reconfinement portion of their sentences. Mr. Colton's Judge granted release.

However, in this particular case, the trial court refused based on statutory grounds. In response, the trial court acknowledged The DOC's policy shift and stated:

"The DOC's policy shift does not persuade the court to alter its prior decision in this matter.

If Section 302.05 (3) (c) 2 directs the circuit court to authorize an inmate's release from an administrative reconfinement order entered pursuant to 302.113 (9)(am), that direction must come from our state legislature or from the appellate court's of this state". See (ROA: 52: 2, App. Exh. D.)

Burgos, posits he is entitled to release based upon his successful completion of ERP, the DOC's policy expansion, and DOC's interpretation of the statutes. Moreover, other inmates around the state are being released following their successful completion of ERP during reconfinement as we speak. This court should clarify the law on this subject. If what the DOC is doing is lawful, then Burgos is being unlawfully detained, when other inmates are being released due to DOC's interpretation of the statute and ERP expansion policy.

III. The DOC had authority under Wis. Stat. 302.05 (3)(a)(2) to authorize Burgos' enrollment and participation in ERP and subsequent release.

Although the court may determine whether a person is eligible for participation in the ERP under Wis. Stat. 973.01 (3g) and (3m) it's up to the DOC to determine whether the person meets their

criteria for participation. See **State v Cole**, 2020 WL 13356436 @2. Control over the care of prisoners is vested by statute in overseeing the DOC after prison term is selected. See **State v Dean**, 2015 WL 2192769 @13. Programming that an inmate receives in prison is up to the Department of Corrections, See **State v Lynch**, 105 Wis 2d 164, 168 (ct. app. 1981)

The DOC has the power and authority to expand the ERP under Wis. Stat. 302.05. The DOC determined that Burgos was a suitable candidate for ERP during Burgos' term of reconfinement, so much so that the DOC requested that the trial court authorize Burgos' release following his successful completion presumably based DOC's interpretation of the statute. See. (ROA: 40: 1, App. Exh. A.)

The trial court presumes that the legislature acted with full knowledge of Section 302.113, when it enacted Section 302.05 concluding, if the legislature intended inmates serving their reconfinement under Section 302.113 (9)(am) to be released upon successful completion of ERP, it could have expressly granted the circuit court with that authority under Section 302.113 and/or Section 302.05.

What the trial court failed to consider was, since the passing of Wis. Stat. 302.113 (9)(b), Governor Tony Evers through Kevin Carr, the former secretary of the DOC, announced the ERP expansion plan March 14, 2021, labeled Corrections Reform. Moreover, the legislature could not foresee the ERP policy expansion would conflict with Section 302.113 and/or Section 302.05. See (ROA: 46: 3)

This expansion of ERP allows for individuals to have multiple enrollments in ERP for the same case. Wisconsin DOC created an expansion committee in 2020. Governor Evers agreed and provided a \$3.4 million budget this was an Executive Directive which included approval from the legislature. See (ROA: 46: 4)

Judge's across the state are authorizing the release of inmate's following the successful completion of ERP during the reconfinement portion of their sentences, however the trial court in Burgos' case failed to authorize Burgos' release. See (ROA: 40: 1, App. Exh. A.)

This comes down to an interpretation of the statute. The trial court concluded that Wis. Stat. 302.05 (3)(c) 2 conflicts with Wis. Stat. 302.113 (9)(am).

The DOC is an administrative agency charged with determining programming for an inmate after prison terms are selected. This involves interpretation of the statutes. Under this analysis, the court of appeals gives great weight deference to an administrative agency's interpretation of a statute when:

"(1) Agency was charged by legislature with duty of administering statute: (2) interpretation of agency is one of longstanding; (3) Agency employed it's expertise or specialized knowledge in forming interpretation, and (4) Agency's interpretation will provide uniformity and consistency

in application of statute"

Gould v Department of Health and Social Services for State of Wisconsin, 216 Wis. 2d 356, 371 (Ct. App. 1998)

This court must determine whether the DOC properly interpreted 302.05 (3)(c) 2 and in deciding that Burgos was eligible to participate in the ERP program, and whether Burgos should be released following the successful completion of ERP and have his reconfinement converted to extended supervision based on the DOC interpretation of the statute.

Under great weight standard, this court upholds an agency's reasonable interpretation of the statute if it is not contrary to the clear meaning of the statute. Under the due weight standard, we uphold the agency's reasonable interpretation if it comports with the purpose of the statute and we conclude that there is not a more reasonable interpretation. We give no deference to the agency, and review the issue de novo, when the issue before the agency is one of first impression or the agency's position has been so inconsistent as to provide no real guidance Id @ 371.

This court has articulated the three (3) possible levels of deference for an agency's interpretation of a statute. See **Wisconsin Department of Revenue v Menasha Corporation**, 311 Wis. 2d 579 (2008). In reviewing the DOC agency statutory interpretations the three (3) distinct levels of deference great weight, due weight, or de novo review depending on the nature of the determination, Burgos posits that the DOC had authority to interpret 302.05(3)(c)2 authorizing his enrollment, participation and subsequent release following his successful completion of ERP during the reconfinement portion of the sentence. See App. exh. A

The trial court held that Wis. Stat. 302.113 (9)(am) and (b) is plainly contrary to the DOC's request for reconsideration. See (ROA: 41: 1-2, 42: 2, App. Exh. B. and C.) However, an appellate court does not accord the trial court deference when reviewing its conclusion of law because there is nothing intrinsic to its determination when giving the trial court any advantage of an appellate court. See **Schmit v Klumppan**, 264 Wis. 2d 414, 420 (App. 2003).

In any case, Governor Evers, and Secretary Carr determined that Burgos was the exact person they had in mind when amending DOC procedures in 2021 to allow for multiple completions of ERP on the same case. It must be reiterated that Mr. Colton and Burgos successfully completed ERP together in the same group on December 29, 2023 at Prairie Du Chien Correctional Institution during the reconfinement portion of their sentences. Mr. Colton's Judge released him, but Burgos's Judge denied release. Moreover, Burgos is the same person who did not have the opportunity to participate in ERP programming on Case No. 14CF004879 because he waited over Four (4) years before he was able to enroll therefore, the DOC determined that he should be eligible for ERP in lieu of the expansion. See (ROA: 46: 1-6)

Conclusion and Relief Sought

Burgos requests that this court consider and reverse the trial court's denial of the DOC request for the trial court to authorize Burgos' release, and conversion of remaining reconfinement time to extended supervision. On August 14, 2023 Burgos began participation in ERP based on DOC's expansion. At no time before, during, or following Burgos' participation of ERP did the DOC

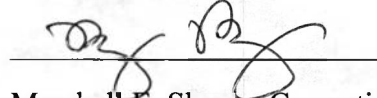
inform him that it was a possibility that his completion of ERP wouldn't result in Burgos release from prison. In fact Burgos was informed that based on the expansion of ERP he would be released following his completion of ERP. It is Burgos' position that had he been informed that his successful completion of ERP wouldn't result in his release Burgos wouldn't have taken the ERP due to the expansion. ERP is an incentivised program.

The ERP expansion has resulted many DOC facilities offering this program to those serving their initial confinement portion of their sentence, and those serving the reconfinement portion of their sentence allowing for multiple completions in ERP for the same case. Pursuant to Wis. Stat. 302.05 the ERP program is a rehabilitation oriented program that offers early release upon successful completion of treatment. See (ROA: 48: 6, 51: 1-2)

The trial court held if Section 302.05 (3)(c) 2 directs the circuit court to authorize an inmate's release from an administrative reconfinement order pursuant to 302.113 (9)(am), that direction must come from the appellate courts of this state. See (ROA: 55: 2, App. Exh. D.)

Dated this October 15, 2024.

Benny Burgos #435497



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