

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 27, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-1650
STATE OF WISCONSIN**

Cir. Ct. No. 95CF000853

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE COMMITMENT OF CHARLES E. LUITZE:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

CHARLES E. LUITZE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
DAVID M. BASTIANELLI, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Charles E. Luitze appeals from a circuit court order revoking his supervised release from his WIS. STAT. ch. 980 (2001-02)¹ commitment upon a finding that Luitze is a danger to the community because he did not properly participate in sex offender treatment. On appeal, Luitze challenges the sufficiency of the evidence that he is a danger to the community and argues that the circuit court misused its discretion by not considering alternatives to revocation of his supervised release. We conclude that the evidence was sufficient and the circuit court was not required to consider alternatives to revocation. *State v. Burris*, 2004 WI 91, ¶2, ___ Wis. 2d ___, 682 N.W.2d 812. Therefore, we affirm.

¶2 In 1996, Luitze was committed under WIS. STAT. ch. 980 as a result of his 1991 conviction for first-degree sexual assault of a child. In October 2002, Luitze was granted supervised release. In January 2003, Luitze was the subject of a petition to revoke his supervised release on the grounds that he did not properly participate in sex offender treatment and believed that he did not need sex offender treatment because of his Christian faith.

¶3 At the revocation hearing, the therapist who led Luitze's sex offender treatment group testified that Luitze failed to make progress in the group. Although Luitze attended the group sessions and answered questions, the therapist felt that Luitze was very evasive. Luitze did not take full responsibility for his conduct, examine his intent, or disclose all of his victims and his conduct towards them. In the therapist's opinion, these are the hallmarks of successful participation

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

in sex offender treatment. The therapist opined that Luitze had a bad attitude and did not acknowledge his sex offender thinking.

¶4 The therapist also testified that Luitze believes that his strong faith renders him safe to the community, and that he does not need sex offender treatment. The therapist perceived Luitze as using his faith as a substitute for research-backed sex offender treatment, which is necessary to reduce the risk of recidivism. In order to be safe in the community, Luitze needs sex offender treatment to identify his sexual assault triggers, which is key to developing a relapse prevention plan. The therapist terminated Luitze from the treatment group after three sessions.

¶5 Luitze's probation and parole agent testified that she revoked Luitze for his failure to cooperate in sex offender treatment.²

¶6 Luitze testified that he was trying to complete the assignments in his sex offender treatment group and that he intended to apply the group's teachings to himself via his strong faith. Luitze stated that because his faith encourages him to think of positive matters, he does not like to think about his assaultive behavior. Luitze conceded at the hearing that he perceives treatment is necessary only because the State says he needs it; Luitze prefers to rely on his faith as a form of treatment. On cross-examination, Luitze admitted that he was a born-again Christian when he sexually assaulted a young relative (the 1991 conviction).

² The agent also revoked Luitze for a breach of a rule of his supervised release relating to contact with minors. Because we affirm the revocation of supervised release on the ground that Luitze is a danger to the community, we need not reach this additional ground.

¶7 In making its findings, the circuit court noted that Luitze has a long history of sexual assaults. The court focused on whether the community can be protected from further offenses by Luitze. The court accepted the therapist's opinion that merely attending sex offender treatment and answering questions is not sufficient, particularly where the offender indicates that he does not need sex offender treatment and intends to rely on his faith. Because Luitze did not accept sex offender treatment or recognize that he requires structured sex offender treatment, the court found that he is a danger to reoffend.

¶8 Under WIS. STAT. § 980.08(6m), supervised release may be revoked if the State proves by clear and convincing evidence that the safety of others requires revocation of the supervised release. In *Burris*, the supreme court held that when a court revokes supervised release because the safety of the public is at risk, the court need not expressly consider alternatives to revocation. *Burris*, 682 N.W.2d 812, ¶2.

¶9 Whether to revoke supervised release is within the circuit court's discretion. *Id.*, ¶45. We will uphold the circuit court's discretionary decision if the court employed "a process of reasoning based on the facts of record and reaches 'a conclusion based on a logical rationale founded upon proper legal standards.'" *Id.* (quoted source omitted).

¶10 On appeal, Luitze argues that the evidence that he is a danger to the community was insufficient to revoke his supervised release. We disagree. The circuit court, as the fact finder, determines the weight of the evidence and the credibility of the witnesses, and we will not overturn those findings unless they are clearly erroneous. *Micro-Managers, Inc. v. Gregory*, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988).

¶11 The therapist's testimony and Luitze's own statements, both in court and outside of court, permit an inference that Luitze did not participate in sex offender treatment in a meaningful way. The evidence, viewed most favorably to the State and the revocation, *State v. Kienitz*, 227 Wis. 2d 423, 434, 597 N.W.2d 712 (1999), supports the court's findings. Because the revocation was based, in part, on the finding that Luitze is a danger to the public, the circuit court did not need to consider alternatives to revocation. *Burris*, 682 N.W.2d 812, ¶2.

¶12 Luitze argues that he is being penalized for thinking that he does not need sex offender treatment and that he was honestly expressing his view as part of his treatment. The circuit court did not interpret Luitze's statement this way. Rather, the circuit court interpreted Luitze's statement as an expression of his belief that he does not need treatment because he has found another way to address his assaultive behavior, i.e., by relying on his faith to keep him from re-offending.

¶13 It is apparent to us that the circuit court understood the distinction between an offender who fails to admit to his or her conduct as part of treatment (but for whom treatment can address denial) and an offender who is stonewalling in treatment. The circuit court perceived Luitze to be in the latter category, and this was a reasonable inference to draw.

¶14 Luitze argues that his previous release for treatment in the community is res judicata, and he has done nothing to change the determination that he can be treated in the community. Again, we disagree. Luitze's statements since his release that he believes his faith obviates the need for research-based sex offender treatment constitute a new fact to be considered by the circuit court in the revocation proceedings.

¶15 In his reply brief, Luitze argues that the treatment offered to him is contrary to WIS. STAT. § 980.08(6m) which requires that the treatment of the WIS. STAT. ch. 980 individual under supervised release be “consistent with the requirements of the person.” Luitze argues that he must be treated even though he believes that he does not need treatment. Luitze raises this issue for the first time in his reply brief. Therefore, we will not consider it.³ *Schaeffer v. State Pers. Comm’n*, 150 Wis. 2d 132, 144, 441 N.W.2d 292 (Ct. App. 1989).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

³ Even if we were to address it, we would conclude that Luitze’s reliance on his faith in place of sex offender treatment renders treatment in the community problematic, as the circuit court determined.

