

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2017

Diane M. Fremgen
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. 2015AP1720

Cir. Ct. Nos. 2014CV1138
2014CV2093

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN EX REL. RONALD SCHROEDER,

PETITIONER-APPELLANT,

V.

BRIAN HAYES,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
PATRICK C. HAUGHNEY, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 PER CURIAM. Ronald Schroeder appeals pro se from a circuit court order that affirmed, on certiorari review, an administrative decision to revoke his extended supervision. For the reasons that follow, we affirm.

¶2 In 2008, Schroeder was convicted of two counts of second-degree sexual assault of an unconscious person. The circuit court imposed an aggregate sentence of six years of initial confinement followed by twelve years of extended supervision.

¶3 Prior to Schroeder's release from confinement, the circuit court held a hearing to address conditions of extended supervision. Among other things, the court imposed a no contact order with N.C., who is Schroeder's ex-wife and mother of his two children. The court authorized Schroeder to send letters to his children through their guardian ad litem.

¶4 On October 22, 2013, Schroeder was released from confinement. That day, Schroeder reviewed and signed his rules of supervision. One of the rules replicated the circuit court's no contact order and prohibited Schroeder from any contact with N.C., including through the mail. The rules also required Schroeder to abide by the schedule set by his agent and to provide his agent with a written log of daily activities.

¶5 Just two days later, Schroeder was taken into custody on a hold for violating his rules. His agent discovered that Schroeder had made several unapproved stops while out running errands, some of which were private residences unknown to the agent. Schroeder failed to document those stops in his activity log. After talking to Schroeder and warning him about future behavior, the agent amended the rules to require Schroeder to prepare a weekly written schedule for approval before engaging in any proposed activities. Schroeder reviewed and signed the amended rules.

¶6 On October 31, 2013, while still in custody on the hold, Schroeder sent a letter to his children that was addressed to N.C. This behavior was in violation of his rules and the order of the circuit court.

¶7 On November 6, 2013, while out of custody, Schroeder traveled to several locations without authorization from his agent. Again, this behavior was in violation of his rules.

¶8 Schroeder's agent subsequently initiated revocation proceedings based upon the above violations. Following a hearing on the matter, the administrative law judge (ALJ) found that the violations were substantiated. The ALJ revoked Schroeder's extended supervision and ordered him reconfined for three years, seven months, and six days.

¶9 Schroeder appealed to the Division of Hearings and Appeals Administrator Brian Hayes, who sustained the ALJ's decision. Schroeder then sought certiorari review from the circuit court, which affirmed the decision. This appeal follows.

¶10 Review of a revocation decision is obtained by a writ of certiorari to the circuit court. *See State ex rel. Washington v. Schwarz*, 2000 WI App 235, ¶16, 239 Wis. 2d 443, 620 N.W.2d 414. In an appeal from the circuit court's order affirming or reversing the decision of an administrative agency, we review the agency's decision, not the circuit court's. *See Mineral Point Unified Sch. Dist. v. WERC*, 2002 WI App 48, ¶12, 251 Wis. 2d 325, 641 N.W.2d 701.

¶11 "Judicial review on certiorari is limited to whether the agency's decision was within its jurisdiction, the agency acted according to law, its decision was arbitrary or oppressive and the evidence of record substantiates the decision."

State ex rel. Ortega v. McCaughtry, 221 Wis. 2d 376, 385, 585 N.W.2d 640 (Ct. App. 1998). This is the standard of review applied by the circuit court and independently by this court. *See id.* at 385-86.

¶12 On appeal, Schroeder offers a host of reasons for why the agency's decision to revoke his extended supervision should be reversed.¹ Taken together, they fall into two general categories: due process violations and sufficiency of the evidence.² We consider each one in turn.

¶13 Schroeder first contends that his due process rights were violated. Specifically, he complains that the ALJ was biased against him. This claim is based upon his allegation that the ALJ engaged in *ex parte* communication with his attorney prior to the hearing, arguing case law with him. He also complains that both the ALJ and Administrator Hayes failed to explain their decisions.

¶14 We are not persuaded by Schroeder's claim of bias. To begin, he does not point to anything in the record to support it, other than an argument in his own brief on appeal to Administrator Hayes. Furthermore, it is unclear how an argument over case law is evidence of bias. The ALJ is not required to accept interpretations of law that lack merit and could reasonably correct counsel if necessary.

¹ Some of Schroeder's arguments relate to the legitimacy of his rules of supervision. Certiorari review of a revocation decision is not the appropriate forum to raise such concerns. In any event, we conclude that Schroeder's rules were both proper and constitutional.

² Schroeder also asserts that the agency acted outside its jurisdiction by considering a rule of supervision (the no contact rule) that was void *ab initio*. Schroeder maintains that the rule was void *ab initio* because the corresponding no contact order was based upon an unsigned memorandum from Schroeder's agent to the circuit court. We are not convinced that Schroeder's agent, who was neither an attorney nor a party, was required to sign the memorandum before submitting it to the court. Even if he were, such a technical defect would not render the no contact order/rule void.

¶15 Likewise, we are not persuaded that the ALJ and Administrator Hayes failed to explain their decisions. In both cases, the ALJ and Administrator Hayes issued written rulings that addressed the violations, their significance, and why revocation and reconfinement were necessary. As noted, Schroeder was on supervision for very serious crimes. His immediate testing and breaking of his rules did not bode well for either his continued supervision or the protection of the community. On this record, we cannot say that the agency's decision to revoke his extended supervision was arbitrary or oppressive.

¶16 Schroeder next contends that, due to an erroneous and unjustified application of his rules of supervision, there is insufficient evidence to support the agency's decision. Again, we disagree.

¶17 There was nothing erroneous or unjustified in the application of the rules at issue. Although Schroeder was in custody on a hold when he violated the no contact rule, he was still subject to it. That is because he had been released from confinement and the subsequent hold did not change his status as a person on extended supervision. See *State ex rel. Riesch v. Schwarz*, 2005 WI 11, ¶18, 278 Wis. 2d 24, 692 N.W.2d 219 (a hold does not change a parolee's status). The rule regarding unauthorized travel also applied to Schroeder, even he though claims to have had a "blanket exception" to it for purposes of attending job fairs. Such an exception was not supported by the testimony of Schroeder's agent. Even if it were, the record indicates that Schroeder stopped at two additional places that were not job fairs without authorization.

¶18 As for the evidence, Schroeder admitted in his testimony to mailing the letter to N.C. He also admitted that he did not report to his agent or speak with him directly before he decided to leave his temporary living placement and travel

to several locations without authorization. These were clear violations of his rules of supervision. Accordingly, we are satisfied that there was sufficient evidence to substantiate the agency's decision.

¶19 For these reasons, we affirm.³

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2015-16).

³ To the extent we have not addressed any other argument raised by Schroeder on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

