

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 31, 2007

David R. Schanker
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. 2006AP349

Cir. Ct. No. 2004CV9103

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**STATE OF WISCONSIN EX REL.
CLINTON SATTERFIELD,**

PETITIONER-APPELLANT,

v.

**DAVID H. SCHWARZ, ADMINISTRATOR,
DIVISION OF HEARINGS AND APPEALS,**

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. DWYER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Clinton Satterfield appeals from an order affirming the decision of the Administrator of the Division of Hearings and Appeals (“Division”), which affirmed the Division’s Administrative Law Judge’s decision

and order revoking Satterfield's parole and reincarcerating him for the entirety of the time remaining on his previously-imposed sentences. The issues are whether: (1) the reincarceration period exceeded the time available on Satterfield's remaining sentences; (2) there was substantial evidence to support revocation; and (3) alternatives to revocation were considered. We conclude that: (1) the duration of Satterfield's reincarceration did not exceed the remaining available period; (2) there was substantial evidence to support Satterfield's revocation; and (3) the alternatives to revocation were considered before they were rejected in favor of reincarceration. Therefore, we affirm.

¶2 Satterfield had been convicted of armed robbery, felon in possession of a firearm, and endangering safety by conduct regardless of life as a habitual criminal, and thereafter, of battery by prisoners. The battery sentence was imposed consecutively to the other aggregate sentences. Ultimately, Satterfield was released on parole with an aggregate total period of six years, two months, and twenty-nine days remaining on his sentences.¹

¶3 When released on parole, Satterfield received the Rules of Community Supervision, which were thirty-three specific rules supplementing court-ordered conditions of parole, all of which were explained to him. Applying to all of the rules and parole generally, the introductory section alerted Satterfield that “[y]our ... parole may be revoked if you do not comply with any of your court-ordered conditions or if you violate any of the following rules.” The two particular rules that Satterfield ultimately violated were: “1. You shall avoid all

¹ Satterfield was sentenced for offenses he committed prior to Truth-in-Sentencing. Consequently, he was released on parole, as opposed to extended supervision.

conduct which is in violation of federal or state statute, municipal or county ordinances, tribal law or which is not in the best interest of the public welfare or your rehabilitation,” and

12. [y]ou shall not purchase, possess, own or carry any firearm or any weapon unless you get approval in advance from your agent. Your agent may not grant permission to carry a firearm if you are prohibited from possessing a firearm under Wis. Stats. s. 941.29, Wisconsin Act 71, the Federal Gun Control Act (GCA), or any other state or federal law.

¶4 Less than two months later, his supervising agent recommended that Satterfield’s parole be revoked for the following alleged violations: (1) Satterfield possessed a knife and used it to threaten Sanga Lynch (one of his housemates at the transitional residence where they were living); (2) he threatened to kill Lynch; (3) he damaged Lynch’s property; and (4) he possessed a gun. A final revocation hearing was held. Satterfield was represented by counsel. Satterfield’s supervising agent, Lynch, and Jeffrey Mixon (another housemate) testified. Although his supervising agent recommended a reincarceration period of less time than that available, the Administrative Law Judge ordered Satterfield reincarcerated for the entirety of the available time remaining on his aggregate sentences.

¶5 Satterfield appealed from the Administrative Law Judge’s decision and order. The Division Administrator affirmed that decision. Satterfield then sought certiorari review in circuit court. The circuit court affirmed the Division’s decision. Satterfield now appeals from the circuit court’s order.

¶6 Judicial review of revocation decisions by certiorari is limited to:

(1) Whether the board kept within its jurisdiction;
(2) whether it acted according to law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented

its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.

Van Ermen v. DHSS, 84 Wis. 2d 57, 63, 267 N.W.2d 17 (1978). An appellate court's scope of review in certiorari proceedings is the same as that of the circuit court. See *State ex rel. Palleon v. Musolf*, 117 Wis. 2d 469, 473, 345 N.W.2d 73 (Ct. App. 1984), *aff'd*, 120 Wis. 2d 545, 356 N.W.2d 487 (1984).

We may not substitute our judgment for that of the division; we inquire only whether substantial evidence supports the division's decision. If substantial evidence supports the division's determination, it must be affirmed even though the evidence may support a contrary determination. "Substantial evidence is evidence that is relevant, credible, probative, and of a quantum upon which a reasonable fact finder could base a conclusion."

Von Arx v. Schwarz, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994) (citations omitted). We review the evidence to ensure that the decision was not arbitrary and capricious. See *State ex rel. Solie v. Schmidt*, 73 Wis. 2d 76, 79-80, 242 N.W.2d 244 (1976).

¶7 Satterfield claims that his mandatory release date was illegally extended because he should have received credit for the time he served on parole. This claim has been rejected. See WIS. STAT. § 302.11(7)(am) (amended Feb. 1, 2003); *State ex rel. Ludtke v. DOC*, 215 Wis. 2d 1, 6, 572 N.W.2d 864 (Ct. App. 1997). The reincarceration period imposed was longer than that recommended by Satterfield's supervising agent, however, it was precisely the time remaining on his aggregate sentences. See § 302.11(7)(am) (a parolee may be returned to prison for violating a condition of parole for a period not to exceed the remainder of his sentence). Satterfield's mandatory release date was extended by fifty-five days, precisely the same correlative period as his fifty-five days on parole.

¶8 Satterfield also challenges the sufficiency of the evidence supporting revocation.

When the sufficiency of the evidence is challenged, we are limited to the question of whether there is substantial evidence to support the department's decision. This is described as a "low burden of proof." Substantial evidence is the "quantity and quality of evidence which a reasonable [person] could accept as adequate to support a conclusion." However, assigning weight to the evidence in a revocation hearing is the province of the department.

George v. Schwarz, 2001 WI App 72, ¶26, 242 Wis. 2d 450, 626 N.W.2d 57 (citation omitted; alteration in *George*). Violating one condition of parole is a sufficient basis for revocation. See *State ex rel. Cutler v. Schmidt*, 73 Wis. 2d 620, 622, 244 N.W.2d 230 (1976).

¶9 At the revocation hearing, Mixon testified that Satterfield threatened him with a knife and threatened to kill him. Lynch confirmed Mixon's testimony. Mixon also testified that Satterfield broke Lynch's television; Lynch had left the house by that time, but testified that when he returned, he found his television broken. Mixon also testified that Satterfield possessed a gun. Satterfield reported in a statement that "I got no comments on drinking and starting to fight with Sanga Lynch," and "[t]he Dept of Corrections cannot prove nothing." Satterfield also testified; the Administrative Law Judge found him "evasive and non-responsive."

¶10 The Administrative Law Judge predicated his revocation decision on the evidence presented by Mixon and Lynch, whom he believed; he did not believe Satterfield, who "has reason to lie to avoid his return to prison." The Division Administrator's decision acknowledged that there were some inconsistencies in the witnesses' testimony; however, "those inconsistencies were not significant enough to cause [the Administrator] to doubt the substance of their

testimony or to set aside the Administrative Law Judge's findings on credibility or weight of the evidence. Additionally, [the Administrator] fully agree[d] that revocation is appropriate." There was substantial evidence to find that Satterfield violated conditions of his parole, and that revocation was warranted. That decision was not arbitrary or capricious. Consequently, Satterfield's sufficiency (or substantiality) of the evidence claim fails.

¶11 Satterfield also contends that there was a failure to consider the alternatives to revocation as a lesser sanction for his conduct. The record belies this contention.

¶12 "[T]he Department must exercise its discretion by at least considering whether alternatives [to revocation] are available and feasible. The Department should not be able to circumvent its duty to consider measures short of revocation by merely setting forth the reasons favoring revocation." *Van Ermen*, 84 Wis. 2d at 67. The framework for handling violations of parole conditions and guidelines regarding potential alternatives to revocation is that:

(a) Violation of a condition is both a necessary and a sufficient ground for the revocation of [parole]. Revocation followed by imprisonment should not be the disposition, however, unless the court finds on the basis of the original offense and the intervening conduct of the offender that:

(i) confinement is necessary to protect the public from further criminal activity by the offender; or

(ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or

(iii) it would unduly depreciate the seriousness of the violation if [parole] were not revoked.

State ex rel. Plotkin v. DHSS, 63 Wis. 2d 535, 544, 217 N.W.2d 641 (1974) (citation omitted).

¶13 The Administrative Law Judge properly exercised discretion and explicitly considered those guidelines as follows:

The client [Satterfield] is on supervision for serious, violent crimes. He was released from prison to parole supervision on his mandatory release date. He was initially placed in temporary housing with the Salvation Army. On May 18, 2004, he was moved to the Transitional Living Facility. Jeffrey Mixon and Sanga Lynch were the client's housemates at that facility. On June 20, 2004, within two months of the client's release from prison, he go[t] into an argument with Sanga Lynch about food in the house. The client pulled a knife and threatened to kill Mr. Lynch. He chased Mr. Lynch down the street. The client subsequently returned to the house and destroyed property belonging to Mr. Lynch. The client left and subsequently returned with a handgun. The client's conduct presents an extremely serious risk that the client will engage in further violent crime if he remains within the community. The client takes no responsibility for his actions. The Examiner [Administrative Law Judge] finds revocation is warranted and necessary to protect the community from further crime by the client and to prevent the client from unduly depreciating the seriousness of his conduct. There is no evidence that these actions by the client were related to a treatable condition. The Examiner finds there are no appropriate alternatives to revocation.

The Administrator's decision acknowledged that the Administrative Law Judge "satisfied the obligation under *Plotkin* to consider alternatives to revocation. Based on Satterfield's underlying offenses and his current violations, the conclusion that he cannot be safely supervised within the community is inescapable."

¶14 Alternatives to revocation were amply considered and rejected in a proper exercise of discretion. Consequently, this claim also fails.²

² Satterfield seeks reimbursement of the filing fee, sentence credit, and his return to parole. Incident to our decision, we reject these requests.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT.
RULE 809.23(1)(b)5. (2005-06).

