

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 18, 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. 2006AP1841

Cir. Ct. No. 2006CV1089

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN EX REL. MICHAEL A. WRIGHT,

PETITIONER-APPELLANT,

v.

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

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Racine County:
FAYE M. FLANCHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Michael Wright appeals *pro se* from a circuit court order affirming on certiorari review the Division of Hearings and Appeals'

decision upholding the administrative law judge's revocation of his parole. We affirm.

¶2 In May 1997, Wright was convicted of theft from an elderly person on his guilty plea and received an eleven-year sentence. In September 2004, Wright was paroled and agreed to rules of community supervision. In February 2005, Wright absconded from supervision and was not apprehended until August 31, 2005. In October 2005, Wright signed an Alternative to Revocation Agreement in which he admitted that he violated his supervision rules by failing to report to his agent, absconding from supervision, and failing to give a clear and concise statement of his whereabouts. Thereafter, Wright did not complete his alternative to revocation.

¶3 At the subsequent parole revocation hearing, the administrative law judge found that Wright failed to report, absconded and failed to make payments toward his supervision fees. The administrative law judge characterized the absconding violation as "extremely serious" because it precluded effective parole supervision. The administrative law judge found that revocation was necessary to protect the public and to avoid unduly depreciating the seriousness of Wright's violations. The division upheld the revocation.

¶4 Our certiorari review of a parole revocation is limited to: "(1) whether the division kept within its jurisdiction; (2) whether the division acted according to law; (3) whether the division's actions were arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the division might reasonably make the order or determination in question." *Von Arx v. Schwarz*, 185 Wis. 2d 645, 655, 517 N.W.2d 540 (Ct. App. 1994).

¶5 On appeal, the parolee must prove that the division’s decision was arbitrary and capricious. *State ex rel. Solie v. Schmidt*, 73 Wis. 2d 76, 79-80, 242 N.W.2d 244 (1976). The division’s decision is not arbitrary or capricious if it was a proper exercise of discretion. *Von Arx*, 185 Wis. 2d at 656. A proper exercise of discretion reflects a reasoning process based on the facts on the record and a “conclusion based on a logical rationale founded upon proper legal standards.” *Id.* (citation omitted). If substantial evidence supports the revocation decision, the decision will be affirmed. *Id.* Substantial evidence “is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Cadott Educ. Ass’n v. WERC*, 197 Wis. 2d 46, 52, 540 N.W.2d 21 (Ct. App. 1995) (citation omitted).

¶6 Wright first complains that he did not receive a preliminary revocation hearing. WIS. ADMIN. CODE § DOC 331.04(2)(b) provides that a preliminary hearing “shall be held” unless “[t]he client has given and signed a written statement which admits the violation.” A preliminary hearing was not required because Wright’s Alternative to Revocation Agreement constituted a written statement admitting a parole violation. In addition, Wright’s September 6, 2005 statement that he did not report to his agent also constituted an admission of a parole violation.¹

¶7 Wright argues that there were no grounds to revoke him because the administrative law judge found that the Department of Corrections did not show

¹ In his September 6, 2005 statement, Wright admitted that he had not been in contact with his agent, although he declined to state reasons for that failure until he could consult with counsel. This admission was sufficient to obviate the need for a preliminary hearing on the Department of Corrections’ revocation request.

that he failed to complete his alternative to revocation program at ZCI. Wright is wrong. We review the division's decision to revoke Wright, not the administrative law judge's decision. See *Von Arx*, 185 Wis. 2d at 655. The division found that Wright did not complete the ZCI program and that ZCI reasonably discharged him from the program. In addition, the division found that Wright violated his supervision by absconding. Violation of any condition of parole constitutes sufficient grounds for parole revocation. *State ex rel. Cutler v. Schmidt*, 73 Wis. 2d 620, 622, 244 N.W.2d 230 (1976). The revocation decision was neither arbitrary nor capricious and was supported by substantial evidence. The division also considered the appropriate criteria for revocation, i.e., revocation was necessary to protect the public and to avoid unduly depreciating Wright's supervision violations. See *State ex rel. Plotkin v. H&SS Dept.*, 63 Wis. 2d 535, 544-45, 217 N.W.2d 641 (1974).

¶8 Wright complains that the administrative law judge considered a dismissed charge of battery to an elderly person. We reject this claim. The administrative law judge observed that Wright's eleven-year theft sentence was evidence of the gravity of his offense. The administrative law judge did not consider the dismissed charge.

¶9 We also reject Wright's claim that alternatives to revocation were not considered. The division sustained the administrative law judge's decision that Wright's history of absconding and the seriousness of his crime imperiled the safety of the community and required confinement rather than another alternative to revocation. In addition, the division noted that Wright did not succeed in his previous alternative to revocation program.

¶10 Finally, Wright complains that the two-year reincarceration period imposed by the administrative law judge was in excess of the ten-month term recommended by the department. As grounds for rejecting the department's recommendation, the administrative law judge cited Wright's underlying offense and the fact that he absconded from supervision five months into his parole. Based on this conduct, the administrative law judge determined that the department's ten-month recommendation was too lenient. The administrative law judge imposed less than the three years and eight months available for reincarceration, and the division concurred. The two-year reincarceration period was neither arbitrary nor capricious.

By the Court.—Order affirmed.

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

