



OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

May 24, 2023

To:

Hon. Barbara W. McCrory
Circuit Court Judge
Rock County Courthouse
51 S. Main St., 5th Fl.
Janesville, WI 53545

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Winn S. Collins
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

Nicholas Scott Werling 139308
Rock County Jail
200 E. Hwy 14
Janesville, WI 53545

You are hereby notified that the Court has entered the following order:

No. 2022AP2020-W

Werling v. Circuit Court for Rock County, L.C.#2022CF1221

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of petitioner-petitioner, Nicholas Scott Werling, pro se, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

Sheila T. Reiff
Clerk of Supreme Court



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

FILED

02-27-2023

CLERK OF WISCONSIN
COURT OF APPEALS

February 27, 2023

To:

Hon. Barbara W. McCrory
Circuit Court Judge
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Nicholas Scott Werling 139308
Rock County Jail
200 E. Hwy 14
Janesville, WI 53545

Mark D. Richards
209 8th Street
Racine, WI 53403

You are hereby notified that the Court has entered the following opinion and order:

2022AP2020-W

State of Wisconsin ex rel. Nicholas Scott Werling v. Circuit Court
for Rock County (L.C. # 2022CF1221)

Before Fitzpatrick, Graham, and Nashold, JJ.

Nicholas Werling has filed a pro se petition for a supervisory writ to compel the circuit court to reduce Werling's cash bail to no more than \$3,500, and to modify the bond condition that Werling not be within 500 feet of a school. Werling contends that the cash bail is excessive and the school bond condition is unreasonable. For the reasons that follow, we deny the petition ex parte. *See* WIS. STAT. RULE 809.51(2).

According to the petition, Werling was arrested and released on a \$2,500 cash bail. Werling was subsequently arrested and charged with bail jumping for violating the condition of his bond that he not be within 500 feet of a school. At Werling's initial appearance for the bail jumping charge, the circuit court commissioner set bail at \$500,000.

Werling filed this writ action to compel the circuit court to lower the cash bail. Werling argued that the circuit court commissioner considered a completely unrelated matter as a “major factor” in setting bail at \$500,000. Werling also argued that his \$500,000 bail was unconstitutional and statutorily excessive. *See* WIS. CONST. art. I, § 6 (“Excessive bail shall not be required”); WIS. STAT. § 969.01(4) (“If bail is imposed, it shall be only in the amount found necessary to assure the appearance of the defendant.”). Specifically, Werling argued that the \$500,000 bail was excessive because Werling has never missed a court date; has never been convicted of a crime; posted bail previously and continued to appear for court; and is eighteen years old and indigent. He also asserted that the bail was excessive because there is little evidence of the crime charged against him; the bail hinders his ability to assist in his own defense; and the current offense is a class H felony, the second lowest in felony classifications. Werling requested a writ directing the circuit court to set bail in an amount of not more than \$3,500. He also asserted that it was impossible for him to comply with the bond condition that he never be within 500 feet of a school, and requested that we direct the circuit court to amend it to a condition that Werling not be on any school property. Werling also moved to stay the circuit court proceedings pending the outcome of his writ petition.

By order dated January 30, 2023, this court noted that, while Werling had filed the petition pro se, the circuit court docket entries indicated that Werling was represented by Attorney Mark Richards in his underlying criminal case. This court also noted that the circuit court docket entries indicated that Werling filed a pro se motion to reduce his bail in the circuit court on December 1, 2022, but that the circuit court had not yet addressed the motion. Accordingly, this court requested input from Attorney Richards as to the status of counsel’s representation of Werling in this matter and the status of the pending motion to reduce bail in the circuit court. This court also denied

Werling's request for a stay, explaining that Werling had not provided any basis for this court to grant that relief.

On February 13, 2023, Attorney Richards filed a response in this court confirming that Attorney Richards represents Werling in the underlying criminal case. Attorney Richards stated that he had filed a motion to modify bond on Werling's behalf, and that the court had scheduled a bond review hearing.

The circuit court docket entries indicate that, on February 15, 2023, the circuit court held a bail/bond review hearing and denied the motion to modify bond. However, the circuit court docket entries also indicate that, on the same date, the circuit court adjusted Werling's cash bail downward to \$50,000, and continued to impose a bond condition that Werling not be within 500 feet of any school.

A petition for a supervisory writ must show that: (1) the duty of the circuit court is plain, and it acted, or intends to act, in violation of that duty; (2) grave hardship or irreparable harm will result absent the writ; (3) an appeal is an inadequate remedy; and (4) the request for relief was made promptly. *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶80, 363 Wis. 2d 1, 866 N.W.2d 165. Here, Werling has not shown that the circuit court violated a plain duty by setting cash bail at \$50,000. At the outset, we note that Werling's petition addresses the \$500,000 cash bail set at Werling's initial appearance, and that cash bail has now been reduced to \$50,000. Werling does not address the reasons the circuit court considered in setting cash bail or the other conditions of bond. Additionally, the circuit court's decision to impose or modify monetary or other conditions of release involves the exercise of discretion. *See* WIS. STAT. §§ 969.01(1), (4); 969.08(1). We will not invoke our supervisory control over the circuit court to

compel a discretionary act. *State ex rel. Dressler v. Racine Cnty. Cir. Ct.*, 163 Wis. 2d 622, 640, 472 N.W.2d 532 (Ct. App. 1991).

Finally, Werling has moved for reconsideration of this court's January 30, 2023 order denying Werling's motion for a stay pending the outcome of his petition for a supervisory writ. Because we now deny the petition, we also deny the motion for reconsideration of the order denying a stay pending the petition.

Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

IT IS FURTHER ORDERED that the petition for a supervisory writ is denied. No costs to any party.

Sheila T. Reiff
Clerk of Court of Appeals