

State of Wisconsin,

Plaintiff,

v.

Case No. 2003CF000607

Jason Harvey,

Defendant.

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**Motion to Terminate Extended Supervision**

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Now comes the above-named defendant, by his attorney, Jeffrey W. Jensen, and pursuant to §302.113(7m)(a), Stats., hereby moves to modify the conditions of his period of extended supervision so as to grant early termination of his period of extended supervision; or, in the alternative, to eliminate the conditions of extended supervision that require the defendant to .

As grounds, the undersigned shows to the court as follows:

1. During the time Harvey has been on extended supervision, Harvey has had no violations and has not been the subject of revocation proceedings.
2. Since Harvey has been on extended supervision he enrolled at Milwaukee Area Technical College and he is studying culinary arts. Harvey's grade-point average is 3.89. He will graduate on May 21, 2009 with an associates degree.
3. Attached is a letter from Harvey's probation officer documenting Harvey's positive adjustment while he has been on supervision.
4. For these reasons, it would not unduly depreciate the seriousness of the offense nor would it endanger the public to modify Harvey's conditions of supervision so as to grant early termination.

Wherefore, it is hereby requested that court order that Harvey's period of extended supervision be terminated forthwith.

Dated at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2009:

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By: \_\_\_\_\_

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**Memorandum in Support of Motion to Terminate Extended Supervision**

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**Introduction**

The defendant, Jason Harvey (hereinafter "Harvey") was charged with possession of cocaine with intent to deliver (<100 grams) arising out of an incident that took place on January 28, 2003. Harvey reached a plea agreement with the state and he pleaded guilty to the charge.

On June 26, 2003, the court sentenced Harvey to three years initial confinement and four years of extended supervision. Harvey completed his term of initial confinement and he was released to extended supervision in June, 2006. Thus, more than one year has passed since the time Harvey was released to extended supervision and he is therefore statutorily eligible to file this petition.<sup>1</sup>

After being placed on supervision, Harvey enrolled at the Milwaukee Area Technical College and he is studying culinary arts. Harvey's grade-point average is 3.89 (see attached print-out of Harvey's report cards). He will graduate on May 21, 2009 with an associates degree. Additionally, Harvey's probation agent is of the opinion

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<sup>1</sup> 302.113(7m)(e)2. "A person subject to this section may not petition the court to modify the conditions of extended supervision within one year after the inmate's release to extended supervision. If a person subject to this section files a petition authorized by this subsection after his or her release from confinement, the person may not file another petition until one year after the date of filing the former petition."

that Harvey has demonstrated a positive adjustment to supervision (see attached letter from the agent). Thus, it would be appropriate to terminate Harvey's extended supervision.

### Argument

**I. Harvey was a model prisoner during his period of confinement and all of his rehabilitative needs have been met while he has been on supervised release and, therefore, it would be appropriate for the sentencing court to modify the length of Harvey's supervised release.**

The sentencing court possesses the authority to modify conditions of extended supervision as necessary to accomplish the two primary goals of supervision: (1) to protect the community; and, (2) to foster the defendant's rehabilitation. Thus, where the court is convinced that the community would not be harmed and that the defendant's rehabilitation would be fostered, the court may grant early termination of extended supervision.

Although the *Department* may not grant an early termination from extended supervision<sup>2</sup>, there is no similar constraint upon the sentencing court. Rather, §302.113(7m)(a), Stats., provides that:

(a) Except as provided in par. (e), a person subject to this section or the department may petition the sentencing court to modify *any* conditions of extended supervision set by the court.

\* \* \*

(c) The court may conduct a hearing to consider the petition. The court may grant the petition in full or in part if it determines that the modification would meet the needs of the department and the public and would be consistent with the objectives

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<sup>2</sup> § 973.01(7), Stats., provides, " **No discharge.** The department of corrections may not discharge a person who is serving a bifurcated sentence from custody, control and supervision until the person has served the entire bifurcated sentence."

of the person's sentence.

The legislature's use of the word "any" in §302.113(7m)(a) makes clear that the court has the legal authority to modify every condition of extended supervision including the length of the period of extended supervision. On this point, the Court of Appeals in *State v. Harris*, 2008 WI App 189, P12 (Wis. Ct. App. 2008) explained:

Therefore, "[c]ase law relating to the propriety of conditions of probation is applicable to conditions of supervision." *State v. Miller*, 2005 WI App 114, P13 n.3, 283 Wis. 2d 465, 475 n.3, 701 N.W.2d 47, 52 n.3. has always been recognized that a circuit court may modify conditions of probation at any time. See WIS. STAT. § 973.09(3)(a) ("Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof."); *State v. Sepulveda*, 119 Wis. 2d 546, 552-562, 350 N.W.2d 96, 99-104 (1984). Thus, "inherent within the probation statute is the judge's authority to effectuate the purposes behind probation." *Id.*, 119 Wis. 2d at 556, 350 N.W.2d at 101. Significantly, although the terms of probation may not be modified to punish a defendant for exercising his or her rights, they may be modified to accommodate and account for new circumstances that affect the needs to protect the public and rehabilitate the defendant. *Id.*, 119 Wis. 2d at 557-562, 350 N.W.2d at 101-104.

Plainly, if the sentencing court may *extend* a period of supervision where the purposes of supervision require it; then the court may also shorten the period if the purposes of supervision have been completed.

Here, there is no further need for Harvey to be on supervision. He has demonstrated that he poses no danger to the community. During the two years he has been on supervision there have been no violations. Moreover, Harvey has demonstrated a commitment to rehabilitation. He has enrolled in the Milwaukee Area Technical College, he has obtained outstanding grades, and he will graduate in May, 2009.

This being the case, it would not endanger the community to terminate Harvey's supervision. Additionally, his rehabilitation would be enhanced because, not being on

supervision, he has far more employment options open to him. He will obtain a degree in culinary arts. If he remains on supervision his employment opportunities will be limited to the Milwaukee area. On the other hand, if Harvey is removed from supervision he will be free to pursue the best employment offer- wherever it is located.

**Conclusion**

For these reasons it is respectfully requested that the Court terminate Harvey's period of extended supervision forthwith.

Dated at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2009:

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