

No. 96-2962

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JAMES R. SCHULTZ,

PETITIONER-RESPONDENT,

v.

GERALD BERGE AND TOM GOZINSKE,

RESPONDENTS-APPELLANTS.

ERRATA SHEET

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PLEASE TAKE NOTICE that the attached page two is to be substituted for page two in the above-captioned opinion which was released on April 17, 1997.

Dated this 16th day of May, 1997.

court erred in concluding that principles of equitable estoppel may be applied to enjoin enforcement of the rule, we reverse the order.¹

The facts are not in dispute. In 1987, while incarcerated at a different institution, Schultz acquired a typewriter with a one-page memory or text-storing capacity. He was transferred to Fox Lake in December 1994, and at some time he received an updated version of DOC 309, Internal Management Procedure # 1-B, which provides, “Typewriters may not have a memory bank or be capable of storing text.” A little over a month later, the typewriter was damaged during a routine search of Schultz's cell, and correctional officers agreed to pay Schultz its value, depositing \$70 in his inmate account. Schultz then ordered a new typewriter, with similar text-storing capabilities, from a mail-order company. When the new machine was delivered, Fox Lake staff determined that it was prohibited by IMP #1-B and notified Schultz that it would not be delivered to him.

Schultz filed an inmate complaint, and the prison complaint officer recommended dismissal on grounds that the “institution[']s obligation to ... Schultz was satisfied and he was made whole when he agreed to and accepted [the] \$70.00 for his loss.... FLCI[']s ... reports adequately detail the controlling regulations and all inmates ... are required to follow them.” Schultz appealed to the warden, who confirmed the complaint officer's decision. Schultz exhausted his administrative remedies and petitioned the trial court for a writ of certiorari.² Acknowledging that the rule applied to

¹ Schultz has moved to summarily dismiss the appeal under § 809.21, STATS. For reasons stated in this opinion, the motion is denied.

² Schultz originally filed a small claims action for return of the typewriter. After several changes of venue, the action was converted to a petition for certiorari. Appellants suggest that the trial court lacked jurisdiction to consider Schultz's petition because it was not served on them until after the time for initiating such an action had expired. Because *pro se* prisoners “in some circumstances deserve some leniency” in complying with procedural requirements, *Waushara County v. Graf*, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19 (1992), *cert. denied*, 506 U.S. 894 (1992), we consider Schultz's petition to have been timely filed.

