

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 24, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 96-2646

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. KARL JULIUS JAMES,

PETITIONER-APPELLANT,

v.

**MICHAEL J. SULLIVAN, SECRETARY, DEPARTMENT OF
CORRECTIONS,**

RESPONDENT-RESPONDENT.

**APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.***

Before Eich, C.J., Dykman, P.J., and Deininger, J.

EICH, C.J. Karl J. James, an inmate at the Waupun Correctional Institution, appeals from an order dismissing his certiorari action for failure to state a claim upon which relief may be granted.

The facts are not in dispute. James filed an inmate complaint at Waupun alleging that: (1) he was denied access to legal materials because pages were missing from a law book in the prison library; (2) he was not provided with requested information on a group complaint he signed concerning recreation and telephone use; and (3) his signature was attached to a request for press clippings without his consent. After reviewing James's complaint, the Department of Corrections dismissed his complaint and he filed a certiorari petition in the circuit court which, as indicated, was dismissed for failure to state a claim.

On certiorari, we review the action of the agency independently of the trial court. *State ex rel. Staples v. DHSS*, 136 Wis.2d 487, 493, 402 N.W.2d 369, 373 (Ct. App. 1987). We determine whether “the agency’s decision was within its jurisdiction, the agency acted according to law, its decision was arbitrary or oppressive and the evidence of record substantiates the decision.” *Id.*

James first argues that the department failed to follow its own procedural rules by not providing him with information he requested—specifically, missing pages from a book in the prison law library and information on a group complaint regarding recreation and telephone use.¹ However, prison officials informed James that because the law library did not have additional copies of damaged books, copies of the missing pages would have to be ordered and would be provided to him as soon as the copying could be done. As for his allegation that he had not been provided information about the “group complaint,”

¹ James relies on WIS. ADM. CODE § DOC 309.27, which provides for access to legal materials, and § DOC 310.06(4), which states that if the inmate complaint investigator determines that the inmates do not share a common complaint, the inmates who signed the group complaint should be notified when administratively feasible. *See* Appendix Note to WIS. ADM. CODE § DOC 310.06, at 118.

prison officials notified him that no group complaints containing his signature had been found and provided him with a listing of some thirty-eight individual complaints he had filed during the previous two years.² On these facts—which James does not challenge—we agree with the respondent that, in both instances, reasonable minds could arrive at the conclusion that prison staff apparently reached—that they had fully complied with these requests—and that is sufficient to defeat James’s certiorari challenge. See *State ex rel. Whiting v. Kolb*, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990).

James’s assertion that his signature was attached to an interlibrary loan request for press clippings without his consent is no more than a request that we order the department to conduct an investigation into the matter—relief that is unavailable in certiorari proceedings. See *State ex rel. Richards v. Leik*, 175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct. App. 1993) (certiorari court affirms or reverses agency’s action—it cannot order the agency to perform a certain act).

James correctly points out that a prisoner’s *pro se* pleadings should be construed liberally. *Lewis v. Sullivan*, 188 Wis.2d 157, 161, 524 N.W.2d 630, 632-33 (1994). But even if we were to consider his action as one seeking a writ of mandamus, it too would fail, for mandamus will not issue in the absence of substantial injury or damage to the petitioner, *State ex rel. Oman v. Hunkins*, 120

² James argues that the State is precluded from raising this on appeal on grounds of claim preclusion, issue preclusion and estoppel by record because this information was not brought to the complaint examiner’s attention. Such theories, however, apply only when there are two separate legal proceedings or actions, *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-51, 525 N.W.2d 723, 727-28 (1995); *Brooks v. Bank of Wis. Dells*, 161 Wis.2d 39, 46-47, 467 N.W.2d 187, 190 (Ct. App. 1991), and are inapplicable here.

Wis.2d 86, 88, 352 N.W.2d 220, 221 (Ct. App. 1984), and James concedes in his brief that he was not adversely affected by the interlibrary loan incident.³

James has not persuaded us that the department's decision to dismiss his complaint was unreasonable.

By the Court.—Order affirmed.

Not recommended for publication.

³ James raises several other arguments, including allegations of intentional falsification of records, perjury and conspiracy. As we noted above, however, certiorari review is strictly limited to the record made before the agency, *State ex rel. Irby v. Israel*, 95 Wis.2d 697, 703, 291 N.W.2d 643, 646 (Ct. App. 1980), and these additional “arguments” not only are outside the appellate record but are raised for the first time on appeal and will not be considered. *State ex rel. Richards v. Leik*, 175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct. App. 1993); *see also In re C.A.K.*, 154 Wis.2d 612, 624, 453 N.W.2d 897, 902 (1990).

