

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 16, 2006

Cornelia G. Clark
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. 2004AP1585

Cir. Ct. No. 2003CV2745

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JESSE HARDY SWINSON,

PETITIONER-APPELLANT,

V.

**ROGER BLACKSHEAER, PENNY THOMAS, LINDA FAIT, STEVEN
PUCKETT AND MATTHEW FRANK,**

RESPONDENTS-RESPONDENTS.

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

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Jesse Hardy Swinson appeals from an order dismissing his complaint. The dispositive issue is whether the complaint properly seeks declaratory judgment relief. We affirm.

¶2 Swinson filed a “Petition for Declaratory Judgment” to compel the Department of Corrections to reclassify him to a “track and security classification equitable” to his crime, criminal record, institution adjustment, program participation, and conduct history. The petition alleged that his current classification and subsequent reviews were based on “sham proceedings” guided in part by DOC policies or procedures that Swinson asserts are not consistent with statutes. Although Swinson uses the term “rule” to refer to those policies or procedures, it appears that he is not using that term in the usual legal sense, in which “rule” refers to the administrative rules contained in the Wisconsin Administrative Code. The circuit court concluded in part that the relief sought is not available by declaratory judgment because relief is available in certiorari, and therefore it concluded that the complaint failed to state a claim for a declaratory judgment.

¶3 On appeal, Swinson spends most of his effort on other issues, such as whether the joint committee for review of administrative rules was properly served with the summons and complaint, and the merits of whether the DOC’s policies or procedures are inconsistent with statute. He asserts that declaratory judgment is a proper method, but he does not address whether relief could have been obtained in certiorari instead. The DOC defendants argue that certiorari is the exclusive method for review of Swinson’s classification decision and for review of his claim that the DOC based its classification decision on the unofficially promulgated policies and procedures that he alleges improperly interpreted certain statutes. We agree.

¶4 Certiorari is a remedy for a claim that the DOC based its decision on a rule not properly promulgated and adopted. *See State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 680, 429 N.W.2d 81 (Ct. App. 1988). The purpose of a

declaratory judgment action is to “declare rights, status, and other legal relations.” WIS. STAT. § 806.04(1) (2003-04).¹ Here, Swinson is seeking not just a declaration of rights or status that are not yet clear, but an order reversing his previously set classification status. Having reached that conclusion, we note that Swinson does not ask, if we conclude certiorari is the appropriate form of review, that we remand the matter to the circuit court for it to construe his action as one in certiorari and continue with the merits. Therefore, we simply affirm the dismissal of the complaint.

¶5 Swinson also argues that the circuit court improperly considered this dismissal a “strike” under WIS. STAT. § 801.02(7)(d). As evidence that this occurred, Swinson provides us with a copy of a letter from the Department of Justice stating as much. However, that letter came after the entry of the judgment appealed from, is not a part of the appellate record in this case, and is not a ruling of the circuit court that we can review. The circuit court’s order contains a handwritten note “DOJ” in a location on the last page where one might expect to see who the order has been sent to. However, sending the order to the DOJ is not an act that, by itself, can be construed as a determination that there is a strike.

By the Court.—Order affirmed.

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

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

