

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2007

David R. Schanker
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. 2006AP2303

Cir. Ct. No. 2006CV5709

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. CHENG VANG,

PETITIONER-APPELLANT,

v.

MATTHEW J. FRANK, SECRETARY, DEPARTMENT OF CORRECTIONS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. DWYER, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer and Kessler, JJ.

¶1 PER CURIAM. Cheng Vang, acting *pro se*, filed a petition for certiorari in which he sought sentence credit for time spent in an electronic

monitoring program during a term of probation.¹ Vang's probation was revoked on December 15, 2004. Vang filed his certiorari petition on May 12, 2006. The circuit court dismissed the petition as untimely filed. Vang appeals. We affirm.

¶2 The relevant facts are not in dispute. In 2000, Vang was convicted of second-degree sexual assault of a child. *See* WIS. STAT. § 948.02(2) (1999-2000). The court sentenced Vang to six years of imprisonment, comprised of three years of initial confinement and three years of extended supervision; stayed the sentence; and placed Vang on probation for five years.

¶3 On January 27, 2003, Vang signed an Alternative to Revocation (ATR) agreement. Under the ATR, Vang agreed to “stay in the facility designated by the Department for 180 days” and to “participate in full-time programming ... which includes successful completion of ... EMP [electronic monitoring program].” The ATR was not extended beyond the 180-day period. However, Vang's probation agent required him to remain on EMP after the expiration of the ATR because Vang was not employed. Vang remained on EMP until September 7, 2004. As noted above, Vang's probation was revoked on December 15, 2004.

¹ Vang named the Secretary of the Department of Corrections, Matthew J. Frank, as the respondent. Secretary Frank is not responsible for revocation decisions. As noted by the State, the proper respondent would be David Schwarz, Administrator of the Division of Hearings and Appeals. *See George v. Schwarz*, 2001 WI App 72, ¶¶21-22, 242 Wis. 2d 450, 626 N.W.2d 57. The mis-designation of the respondent is immaterial to our decision.

¶4 In his certiorari petition, Vang alleged that, even though the ATR expired after 180 days, he remained on EMP for 589 days. In the petition, Vang chronicles a series of unsuccessful requests to various officials within the Department of Corrections asking that his revocation order be amended to reflect sentence credit for the entire time spent on EMP.

¶5 Vang is not entitled to certiorari relief.² Vang's petition for certiorari was filed nearly eighteen months after the revocation order. WISCONSIN STAT. § 893.735(2) (2003-04) sets a forty-five day deadline for Wisconsin prisoners seeking certiorari relief from an administrative decision. A person challenging the revocation of probation must comply with § 893.735(2). *State ex rel. Cramer v. Court of Appeals*, 2000 WI 86, ¶3, 236 Wis. 2d 473, 613 N.W.2d 591. The failure to meet this statutory filing deadline deprives the court of subject matter jurisdiction. *State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶5, 235 Wis. 2d 63, 611 N.W.2d 774. Therefore, the circuit court properly dismissed Vang's petition.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

² Vang may request sentence credit in his underlying criminal matter, circuit court case No. 00-CF-2822. We express no opinion as to whether any credit is properly due Vang.

