

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 15, 2008

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. 2007AP809

Cir. Ct. No. 2007CV1050

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. DORIAN BROWN,

PETITIONER-APPELLANT,

v.

**DAVID SCHWARZ, ADMINISTRATOR,
DIVISION OF HEARINGS AND APPEALS,**

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County:
JOHN A. FRANKE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Dorian Brown appeals from an order dismissing his petition for a writ of mandamus, and from a correlative order denying his motion for reconsideration. The issues are whether two Department of

Corrections documents relating to the revocation of Brown's probation were invalid because they were not actually signed by the supervisor of Brown's probation agent. We conclude that Brown may not use mandamus to successively litigate the revocation of his probation. Therefore, we affirm.

¶2 Brown's probation was revoked because he violated the rules of supervision. Brown challenged his revocation by filing a petition for a writ of certiorari. On January 30, 2007, the trial court rejected Brown's challenges, and affirmed the revocation of Brown's probation.

¶3 Five days prior to that denial and while his certiorari petition was still pending, Brown filed a petition for a writ of mandamus, challenging the same revocation proceeding in a different branch of the Milwaukee County Circuit Court. In his mandamus petition, Brown challenged the validity of two departmental documents, the Recommendation for Administrative Action ("Recommendation") and the Revocation Hearing Request ("Hearing Request"), because neither was actually signed by the departmental supervisor of Brown's probation agent.¹ The trial court dismissed the mandamus petition twelve days after it was filed, and seven days after a different branch of the circuit court had denied Brown's certiorari petition challenging that same revocation order, ruling that any challenge to the revocation order should have been raised in the previously filed certiorari petition. Brown moved for reconsideration. The trial court similarly denied that motion, ruling that mandamus was an inappropriate remedy for the relief he sought, and that Brown has not shown how "the *absence*

¹ The Recommendation was signed by the parole agent, but not by the supervisor. The Hearing Request contained the typed name of the agent's supervisor, and the date that name was "signed" (typed).

of certain signatures has injured him. More importantly, it is clear that ordering someone to now sign a document would not remedy any injury.” (emphasis in original). Brown appeals from the dismissal and reconsideration orders.

¶4 Certiorari is the appropriate remedy to challenge revocation orders. *See State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 183, 572 N.W.2d 505 (Ct. App. 1997). Brown’s petition for a writ of certiorari, challenging the revocation order, was pending in the trial court. Rather than amend that petition, or wait for the trial court’s decision on that petition, Brown elected to file a petition for a writ of mandamus challenging the same revocation order in a different branch of the same circuit court while his certiorari petition was pending. In his mandamus petition, he alleged no reason why he did not raise the issue involving the validity of the two departmental documents in his certiorari petition initially, or amend his pending certiorari petition with his current claim.

¶5 We affirm the trial court’s dismissal of Brown’s mandamus petition. Brown contends that the absence of the supervisor’s signature from the Recommendation and from the Hearing Request render those documents invalid, and thus, deprived the Division of jurisdiction to adjudicate his revocation proceedings. This theory challenges the entire revocation procedure, which is properly challenged by certiorari, not by mandamus. *See id.* Brown’s failure to raise that issue in his certiorari petition, particularly when he has alleged no reason why he failed to previously raise that issue, precludes him from doing so belatedly. *See State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343-44, 576

N.W.2d 84 (Ct. App. 1998).² Insofar as Brown challenges the validity of the revocation order, he has previously litigated that claim and is precluded from relitigating it. Consequently, there is no valid reason to entertain a challenge by mandamus when that challenge should have been raised by certiorari. See *State ex rel. Morke v. Wisconsin Parole Bd.*, 148 Wis. 2d 250, 252-53, 434 N.W.2d 824 (Ct. App. 1988). These reasons necessarily warrant our also affirming the trial court's order denying Brown's reconsideration motion.

By the Court.—Orders affirmed.

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

² Brown alleges his reasons for failing to previously raise this issue in his reply brief on appeal. His reasons must be alleged in the mandamus petition to afford the trial court the first opportunity to assess whether his reasons for failing to previously raise the issues are sufficient to overcome the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994), extended to certiorari petitions challenging revocation orders in *Macemon*. See *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343-44, 576 N.W.2d 84 (Ct. App. 1998). Brown's failure to allege his reasons in his mandamus petition procedurally bars our consideration of his substantive challenge. See *id.*

