

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 31, 2009

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. 2008AP1513

Cir. Ct. No. 2007CV8971

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. LEONARD COLLINS,

PETITIONER-APPELLANT,

v.

ALFONSO GRAHAM CHAIR, WISCONSIN DEPARTMENT OF CORRECTIONS,

RESPONDENT,

**RICHARD RAEMISCH, SECRETARY, WISCONSIN DEPARTMENT OF
CORRECTIONS AND WISCONSIN PAROLE COMMISSION,**

RESPONDENTS-RESPONDENTS.

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

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

¶1 PER CURIAM. Leonard Collins appeals *pro se* from a circuit court order affirming a decision issued by the Parole Commission of the Wisconsin Department of Corrections. Because we conclude that the Commission kept within its jurisdiction, acted according to law, properly exercised its discretion, and made a reasonable decision based upon the record, we affirm.

¶2 In 1976, Collins received a life sentence after he was convicted of the first-degree murder of his mother-in-law. It is undisputed that Collins long ago reached his parole-eligibility date and that Collins has been denied parole numerous times.¹ Information provided by Collins and others prior to the parole review that is the subject of this appeal indicated that Collins had completed several programs, but the information also indicated that Collins had not completed required AODA (alcohol and other drug abuse) programs. According to the information presented to the commissioner in charge of Collins' case, "substance abuse played a role" in Collins' murder of his mother-in-law. Other information provided by a social worker who had worked with Collins indicated that Collins had started an AODA program, but left the program prior to completion. Collins had reapplied to the program, but could not be admitted until months after the parole hearing was scheduled. Finally, the commissioner was notified that security staff were concerned with what they termed Collins' "defiant attitude."

¹ The State suggests that Collins was eligible for parole after twenty years, and Collins responds that he was parole eligible after approximately eleven years. This dispute had no effect on the Commission's decision or the circuit court's decision, and it has none on our decision. We therefore decline to consider it further.

¶3 At the parole hearing, the commissioner questioned Collins about this information. At first, Collins declined to provide the commissioner with any additional information. He subsequently affirmed that he had refused AODA treatment and that he was “back on track to start it again.” He took issue with allegations of his “defiant attitude,” claiming that he had been “kicked out of ... [a prison] school for nothing” and that he had no knowledge of the vocational instructor’s assessment of his attitude. At the end of the hearing, the commissioner stated that her recommendation would be for an additional eleven months in prison due to Collins’ failure to complete AODA treatment and his inability to find work due to his attitude as perceived by staff. She then filed a written decision for the Commission, which ratified that action. In doing this, the commissioner reiterated Collins’ failure to complete AODA programming, his “consistently defiant attitude” that had kept him from being chosen for prison jobs, Collins’ inability to offer insights or information regarding these assessments, and his apparent lack of interest in the proceedings. Collins was advised that it was his responsibility to earn release.

¶4 Collins petitioned for certiorari review in the circuit court. The circuit court established a briefing schedule, but then the State moved to quash Collins’ petition. The State subsequently withdrew its motion, and the circuit court established a briefing schedule on the merits of the certiorari petition. After the matter was briefed, the circuit court affirmed the Commission’s decision, noting that its review was limited to the record before it and that it could not consider Collins’ factual allegations and evidence not found in the review-hearing record. The court concluded that there was substantial evidence in the record to support the Commission’s decision. Collins appeals that decision to this court, arguing that the circuit court erroneously exercised discretion in amending the

briefing schedule² and that the Commission relied on a deficient record, which, if complete, would have demonstrated that he had no need of AODA treatment.

¶5 Our standard of review is identical to the standard applied by the circuit court and is well-settled. We are limited to determining: (1) whether the commission kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. *State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 679-80, 429 N.W.2d 81 (Ct. App. 1988). “The test is whether reasonable minds could arrive at the same conclusion reached by the commission.” *State ex rel. Saenz v. Husz*, 198 Wis. 2d 72, 77, 542 N.W.2d 462 (Ct. App. 1995). The criteria the Commission must apply are set forth in WIS. ADMIN. CODE § PAC 1.06(7), which provides that the Commission may grant parole only after the inmate has: (a) become parole eligible; (b) served sufficient time so release would not depreciate the seriousness of the underlying offense; (c) demonstrated satisfactory adjustment to the institution and to program participation; (d) developed an adequate parole plan; and (e) reached a point where release would not pose an unreasonable risk to the public.

¶6 We are satisfied that the record supports the Commission’s decision to delay parole for Collins for an additional eleven months. There is no dispute

² Because we directly review the Commission’s decision and not the circuit court’s decision, we will not consider this argument other than to note that a circuit court has wide discretion in establishing and amending its schedule. See *Alexander v. Riegert*, 141 Wis. 2d 294, 298, 414 N.W.2d 636 (1987). Even if the circuit court did not state reasons for the scheduling amendment, however, Collins has not established that he was at all prejudiced by the amendment or that he could be afforded any relief for that alleged discretionary error.

but that the Commission kept within its jurisdiction. As for the question of whether the Commission acted according to law, the record demonstrates that the Commission followed the parole eligibility criteria above. It is also clear, however, that the Commission was not satisfied that, given Collins' failure to complete AODA programming and his "defiant attitude" as described by prison staff, Collins had satisfactorily adjusted to the institution and to program participation. It is also reasonable to assume that the Commission's concerns in this regard indicated that Collins may not have reached a point where it could be confident that Collins would not pose an unreasonable risk to the public. Although Collins certainly takes issue with the Commission's decision,³ the decision itself is not unreasonable and is supported by the record. Consequently, we must affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

³ One of Collins' arguments requires some additional comment. He argues that the Commission should have taken into account that his original programming did not require AODA treatment and that the commissioner who interviewed him purposely ignored that fact. The record does not support these allegations. First, and perhaps most importantly, Collins did not object to the commissioner's statement that she would recommend an additional eleven months of incarceration so that he could complete AODA programming. Thus, the issue is arguably waived. Second, there is nothing in the record to show that the commissioner was aware of this "fact," and that, if she was, she ignored it. Third, assuming that Collins is correct that AODA was not a required part of his original programming, it does not logically follow that it could not have become part of his programming during the years he served in prison.

