

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 21, 2002

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. 01-0535
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-3236

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL. QUINTIN D.
L'MINGGIO,**

PETITIONER-APPELLANT,

V.

JANE GAMBLE AND GERALD BERGE,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Quintin L'Minggio appeals an order which dismissed his petition for review of a prison disciplinary decision. We affirm the dismissal of L'Minggio's action, although on slightly different grounds than those relied upon by the circuit court.

¶2 Prison officials at the Kettle Moraine Correctional Institution issued L'Minggio a conduct report for allegedly participating in gang activity and planning to assault prison staff. On February 24, 2000, the adjustment committee found L'Minggio guilty of violating administrative rules against group resistance and conspiracy to commit battery. The committee imposed eight days of adjustment segregation and 360 days of program segregation and referred the matter to the program review committee, which ultimately transferred L'Minggio to the SuperMax prison in Grant County based on the violations. L'Minggio appealed the disciplinary determination to the warden, who affirmed it on March 6, 2000. After attempting to appeal the warden's decision to the Secretary of the Department of Corrections, L'Minggio filed an inmate complaint on June 12, 2000, relating to the disciplinary proceeding. The Inmate Complaint Examiner (ICE) rejected the complaint as untimely the following day and returned L'Minggio's documents to him on June 22, 2000.

¶3 It appears L'Minggio next attempted to seek judicial review by filing a document requesting a writ of habeas corpus in the Dane County Circuit Court. L'Minggio's petition was returned to him with a letter dated August 3, 2000, explaining that certain required documents were missing from his submission and that habeas corpus actions are properly venued in the county of confinement.

¶4 On October 3, 2000, L'Minggio filed another document labeled as a petition for a writ of habeas corpus in the Grant County Circuit Court. Upon review, however, the Grant County court construed L'Minggio's action as a petition for certiorari, rather than habeas corpus, and transferred the case to Dane County in accordance with the venue provision of WIS. STAT. § 801.50(3) (1999-

2000).¹ The Dane County court agreed that the action was properly construed as a petition for certiorari and dismissed it as untimely under WIS. STAT. § 893.735.

¶5 On appeal, L’Minggio contends, first, that he was seeking habeas relief, and second, that even if his action was properly construed as a petition for certiorari, it was timely because he attempted to file it in Dane County within forty-five days of receiving his papers back from the ICE. We disagree that the action sought habeas relief, and we further conclude that the action was properly dismissed under WIS. STAT. § 802.05(3)(b)4 because L’Minggio had not properly exhausted his administrative remedies.

¶6 It is well established that the proper mechanism for reviewing prison disciplinary decisions and security assignments is certiorari. *State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980); *see also State ex rel. Richards v. Leik*, 175 Wis. 2d 446, 449-50, 499 N.W.2d 276 (Ct. App. 1993). The issues L’Minggio raised in his petition clearly related to the conduct report, the disciplinary hearing and L’Minggio’s ensuing transfer. The petition did not relate to the validity of his conviction or even, as he claims, to the conditions of his confinement. Thus, the action was properly venued in Dane County and the forty-five-day time limit of WIS. STAT. § 893.735 applied to L’Minggio’s claims.

¶7 Under WIS. STAT. § 893.735(2), the time limit for seeking certiorari review begins to run when an inmate has “actual notice of the decision or disposition” giving rise to his claim for relief. WISCONSIN ADMIN. CODE § DOC 303.76(7)(d) provides that the warden’s decision on a disciplinary appeal “is final

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

regarding the sufficiency of the evidence,” but goes on to note that “[a]n inmate may appeal procedural errors as provided under s. DOC 310.08 (3).” Therefore, as we explained in *State ex rel. Frasch v. Cooke*, 224 Wis. 2d 791, 796-97, 592 N.W.2d 304 (Ct. App. 1999), the time for an inmate to file a certiorari action seeking review of alleged procedural errors relating to a prison disciplinary decision is tolled until after the inmate has pursued a complaint through the ICRS.

¶8 Because several of L’Minggio’s claims are procedural in nature, the time for him to file a certiorari action did not begin to run with the warden’s decision. However, the same procedural nature of those claims also required L’Minggio to complete the ICRS procedure in order to exhaust all of his available administrative remedies. *See id.* The record shows that L’Minggio failed to appeal the ICE’s decision to the CCE and then to the Secretary of the Department, as provided in WIS. ADMIN. CODE § DOC 310.13. His failure to do so bars him from seeking judicial review. WIS. STAT. § 801.02(7)(b). It was therefore proper for the circuit court to dismiss the action under WIS. STAT. § 802.05(3)(b)4.

By the Court.—Order affirmed.

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

