

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 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. 01-1075

Cir. Ct. No. 00-CV-2309

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. DANIEL HARR,

PLAINTIFF-APPELLANT,

v.

**JUDY SMITH, JON LITSCHER, STEPHEN M. PUCKETT,
WILLIAM SCHIFF, TODD TIMM, MARTIN SCHROEDER,
BETTY YOST, CHRIS KRUEGER, TIM PIERCE, JAMES
SCHWOCHERT, JAMES SCHAUB, AND FOUR MEMBERS OF
PROGRAM REVIEW,**

DEFENDANTS-RESPONDENTS.

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

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Daniel Harr, a prison inmate, appeals an order dismissing his complaint against the respondents, all Department of Corrections

(DOC) employees. The complaint alleged a violation of his free speech rights under the Wisconsin Constitution. The trial court granted the State's motion to dismiss the complaint for failure to state a claim. We affirm.

¶2 Harr was formerly incarcerated at Oshkosh Correctional Institution. While there, he prepared a letter to a newspaper reporter alleging mistreatment of Wisconsin inmates placed in Texas correctional facilities. Officers at Oshkosh intercepted the letter. After a hearing, the disciplinary committee found that the letter violated WIS. ADMIN. CODE § DOC 303.271. Harr pursued his administrative remedies, but did not file a petition for judicial review of the disciplinary decision after those efforts failed.

¶3 Harr subsequently commenced this action, alleging that seizing the letter and punishing him for writing it were violations of his right of free speech. He asked for damages against the respondents and for an order setting aside the disciplinary finding and its consequences. His amended complaint clarified that all claims were brought under state law and the state constitution.

¶4 Review of the disciplinary determination is not available in this proceeding. Certiorari is the judicial remedy available to a prisoner aggrieved by a prison disciplinary decision.¹ See *State ex rel. Nichols v. Litscher*, 2001 WI 119, ¶¶13-14, ___ Wis. 2d ___, 635 N.W.2d 292. WISCONSIN STAT. § 893.735(2) (1999-2000)² provides that a prisoner's action seeking a remedy available by

¹ Harr exhausted his administrative remedies in September 1999 and commenced this action in August 2000.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

certiorari is barred unless commenced within forty-five days after the cause of action accrues. Harr failed to meet this deadline.

¶5 The respondents are immune from Harr's claims for damages. Government officials and employees are not liable for acts done in the performance of their jobs unless those acts involve the failure to perform a ministerial duty; the failure to address a known danger; a negligent medical procedure; or malicious, willful, and intentional conduct. *Kierstyn v. Racine Unified Sch. Dist.*, 228 Wis. 2d 81, 90-100, 596 N.W.2d 417 (1999). The wrongful acts alleged in Harr's complaint are the decisions to confiscate his letter and to prosecute him for a disciplinary violation on the basis of its content. These were not ministerial duties, duties to address a known danger, or medical-related acts under any reasonable view.³ And, Harr has made no allegation or showing that the respondents' actions were malicious, willful or intentional.

¶6 Although the circuit court relied on other reasons for its decision to dismiss, we may affirm a circuit court's ruling on different grounds. See *State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985). Our decision makes it unnecessary to address the remaining issues argued by the parties.

By the Court.—Order affirmed.

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

³ A ministerial duty is one that is absolute, certain and imperative, involving merely the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion. *C.L. v. Olson*, 143 Wis. 2d 701, 711-12, 422 N.W.2d 614 (1988).

