

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 7, 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. 01-1550  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-CV-1275**

**IN COURT OF APPEALS  
DISTRICT IV**

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**GARY CAMPBELL,**

**PLAINTIFF-APPELLANT,**

**V.**

**JERRY SMITH, JR. AND FRED MELENDEZ,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
MORIA KRUEGER, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Gary Campbell, a prison inmate, appeals from an order dismissing his action against Jerry Smith, Jr., and Fred Melendez, two members of the Wisconsin Parole Commission. His complaint sought damages in tort for the respondents' alleged violation of his due process and equal protection rights during a parole review proceeding. On its own motion, pursuant to WIS.

STAT. § 802.05(3)(1999-2000),<sup>1</sup> the trial court dismissed the complaint for failure to state a claim upon which relief could be granted. Campbell takes his appeal from that decision. We affirm.

¶2 The allegations of Campbell's complaint are deemed true for purposes of this review, which we conduct de novo. *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 245, 593 N.W.2d 445 (1999). The complaint states that Campbell became eligible for parole in January 2000. Immediately thereafter Melendez conducted a parole review and denied parole to Campbell without affording him a hearing. By doing so, Campbell asserts, Melendez violated his due process and equal protection rights and negligently and intentionally subjected him to emotional distress, entitling him to damages.

¶3 Courts should liberally construe inmate petitions and complaints. *See State v. Debra A.E.*, 188 Wis. 2d 111, 138, 523 N.W.2d 727 (1994). Campbell's complaint, construed liberally, sought certiorari review of the parole decision, and alleged a 42 U.S.C. § 1983 federal civil rights claim for damages and a state tort law claim.

¶4 Campbell failed to state a claim for certiorari review. Aside from the fact that Campbell expressly disavows any intention to pursue certiorari review, his complaint was not timely filed for that purpose. *See* WIS. STAT. § 893.735(2) (an action for certiorari review is barred unless commenced within forty-five days after the cause of action accrues).

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

¶5 Campbell also failed to state a claim for damages under 42 U.S.C. § 1983. One may not pursue procedural due process claims under this section for state actions if those actions are, as here, random and unauthorized, and an adequate post-deprivation state remedy exists. *See Irby v. Macht*, 184 Wis. 2d 831, 843, 522 N.W.2d 9 (1994), *overruled on other grounds, Sandin v. Conner*, 515 U.S. 472 (1995). Review by certiorari is an adequate post-deprivation remedy that Campbell could have pursued. *See id.* at 846-47.

¶6 Throughout his complaint, Campbell alleges that he was denied his “Equal Protection rights.” He never claims, however, that Smith or Melendez intentionally discriminated against him or even that prisoners similarly situated to him were given more favorable treatment. He therefore has failed to state a claim for relief under the equal protection clause. *See Thorp v. Town of Lebanon*, 225 Wis. 2d 672, 691, 593 N.W.2d 878 (Ct. App. 1999).

¶7 Campbell’s complaint failed to adequately set forth a state law tort claim. To do so the plaintiff must allege compliance with WIS. STAT. § 893.82(3), the notice of claim statute. *See Yotvat v. Roth*, 95 Wis. 2d 357, 360, 290 N.W.2d 524 (Ct. App. 1980). Campbell’s complaint did not include that allegation.

*By the Court.*—Order affirmed.

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

