

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 23, 2003

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. 03-0768
STATE OF WISCONSIN**

Cir. Ct. No. 02CV003769

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. DONALD JOHNSON,

PLAINTIFF-APPELLANT,

V.

JON LITSCHER AND GARY MCCAUGHTRY,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

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

¶1 PER CURIAM. Donald Johnson appeals an order which dismissed his action for declaratory relief from a series of prison disciplinary decisions. We agree with the circuit court that a declaratory judgment action is not available to address Johnson's expired certiorari claims, and therefore affirm.

BACKGROUND

¶2 Johnson received seven conduct reports between 1992 and 1996 while imprisoned at the Waupun Correctional Institution. He did not seek certiorari review of any of them. In 1997, the Wisconsin Supreme Court held that the failure of prison officials to give a second notice of hearing to an inmate invalidated the inmate's subsequent disciplinary action. *Bergmann v. McCaughtry*, 211 Wis. 2d 1, 9, 564 N.W.2d 712 (1997). Johnson filed an inmate complaint in 1998, asking prison officials to retroactively apply *Bergmann* to invalidate his prior disciplinary decisions. He alleged he had not received the required second hearing notices. After the prison officials refused his request, Johnson filed an action in circuit court seeking a declaratory judgment that prison officials were obligated under *Bergmann* to review their files and retroactively invalidate all disciplinary decisions for which second hearing notices had not been issued. The circuit court dismissed Johnson's action under WIS. STAT. § 802.05(3)(b)4 (2001-02)¹ for failure to state a claim.

DISCUSSION

¶3 Whether Johnson's complaint states a claim upon which relief could be granted is a question of law that we review de novo. *Evers v. Sullivan*, 2000 WI App 144, ¶5, 237 Wis. 2d 759, 615 N.W.2d 680.

¶4 Although Johnson attempts to label his action as one for declaratory judgment, it is clear from his complaint that the actual relief he is seeking is the

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

invalidation of a series of disciplinary decisions. The proper mechanism for reviewing prison disciplinary decisions is certiorari. *State ex rel. L'Minggio v. Gamble*, 2003 WI 82, ¶¶2, 21, 263 Wis. 2d 55, 667 N.W.2d 1.

¶5 Prior to the enactment in 1998 of the 45-day time limit for prisoners to bring certiorari claims, the deadline for filing certiorari claims was six months. *State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶4, 235 Wis. 2d 63, 611 N.W.2d 774. A certiorari claim which was not brought within six months of the action sought to be reviewed was barred by the doctrine of laches. *State ex rel. Enk v. Mentkowski*, 76 Wis. 2d 565, 575-76, 252 N.W.2d 28 (1977).

¶6 Because Johnson did not seek certiorari review of any of his disciplinary decisions within six months after they were decided, he is now barred from challenging any alleged procedural irregularities which may have occurred in those proceedings. He cannot avoid application of the doctrine of laches by attempting to label his certiorari action as something else. See *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 184, 572 N.W.2d 505 (Ct. App. 1997).

By the Court.—Order affirmed.

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

