

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 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. 03-0802
STATE OF WISCONSIN**

Cir. Ct. No. 01CV003059

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. BERRELL FREEMAN,

PETITIONER-APPELLANT,

V.

GERALD BERGE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
DIANE M. NICKS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Berrell Freeman appeals from an order dismissing his certiorari review action. The trial court concluded that the action was rendered moot by subsequent events. We agree, and therefore affirm.

¶2 While incarcerated at Whiteville Correctional Facility in Tennessee, Freeman was charged with a major disciplinary infraction for his role in a violent prison riot that occurred in November 1999. He was found guilty in a disciplinary proceeding at the facility on December 9, 1999, and transferred to the Wisconsin Secure Program Facility (WSPF) (formerly Supermax Correctional Institution) in April 2000. Relying on the Whiteville disciplinary findings, the Department of Corrections administrative confinement review committee (ACRC) ordered his placement in administrative confinement.

¶3 After seeking various administrative remedies Freeman commenced this action by filing a petition for writ of habeas corpus, in which he challenged the Whiteville disciplinary decision, the decision transferring him to WSPF and the decision to place him in administrative confinement. The trial court construed the petition as one seeking certiorari review of the three administrative decisions, and dismissed it because Freeman did not exhaust his administrative remedies before filing it. Freeman appealed, and on review we reversed in part and remanded to allow Freeman to proceed on his challenge to the ACRC decision of April 2000. *State ex rel. Freeman v. Berge*, 2002 WI App 213, ¶1, 257 Wis. 2d 236, 651 N.W.2d 881.

¶4 Meanwhile, other inmates had successfully challenged administrative confinements also imposed because of their participation in the Whiteville riot, on the grounds that the subsequent Whiteville disciplinary proceedings were procedurally invalid. *See State ex rel. Curtis v. Litscher*, 2002 WI App 172, 256 Wis. 2d 787, 650 N.W.2d 43. In such cases, this court held that the DOC could impose administrative confinement based on the Whiteville riot participation only to the extent that it proved the inmate's

participation without relying on findings of the Whiteville disciplinary proceedings. *Id.* at ¶1.

¶5 Consequently, the DOC vacated Freeman's administrative confinement decision of April 2000, and conducted an independent investigation of his conduct during the riot. After that investigation revealed Freeman's significant participation in the riot, the ACRC again placed him in administrative confinement.

¶6 Because Freeman was confined due to subsequent proceedings, and the April 2000 decision no longer affected his status, the trial court declared his action moot. This appeal concerns that determination.

¶7 The trial court properly dismissed this proceeding as moot. An action is moot when its resolution will have no practical effect on the parties. *See State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis.2d 685, 608 N.W.2d 425. At this point, the proceeding concerns a voided decision that has no bearing on Freeman's present status. It is moot.

¶8 Freeman nevertheless contends that we should reverse and allow him to proceed on a challenge to the subsequent ACRC decision continuing his administrative confinement. He contends that the petition should be converted back into one seeking habeas corpus relief in order to accomplish this. However, habeas corpus relief is not available if other remedies are. *State ex rel. Dowe v. Waukesha County Cir. Court*, 184 Wis. 2d 724, 729, 516 N.W.2d 714 (1994). Freeman's other remedies, after the subsequent, independent determination of the ACRC, were to pursue his administrative remedies and, if still aggrieved, to initiate certiorari review. He cannot skip over those steps and bootstrap review of

the subsequent, independent proceedings into this action, regardless how the petition is labeled.

By the Court.—Order affirmed.

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

