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DISTRICT III

September 6, 2023

To:

Hon. Michael H. Bloom
Circuit Court Judge
Electronic Notice

Brenda Behrle
Clerk of Circuit Court
Oneida County Courthouse
Electronic Notice

Matthew C. Eliason
Electronic Notice

Michael J. Fugle
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP1668 Jeremy Alquist v. Grady Hartman (L. C. No. 2021CV142)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jeremy Alquist appeals an order denying his petition for a writ of mandamus against Oneida County Sheriff Grady Hartman. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22). Alquist sought to compel Hartman to allow Alquist to serve his conditional jail time in the Florence County Jail. Because Alquist completed serving his conditional jail time on January 10, 2022, we summarily affirm the order as moot. *See* ***id.***

The circuit court's electronic docket reflects that in Oneida County case No. 2019CF163, Alquist pled no contest to one count of child enticement.[1] On August 13, 2021, the court withheld sentence, placed Alquist on eight years of probation, and imposed four months in jail as a condition of probation, with Huber work privileges. Alquist was ordered to report to jail on or before September 10, 2021, at 8:00 a.m., and the court provided that Alquist "may serve [the jail sentence] in Florence, Vilas counties or any northern county." Hartman selected Oneida County as the appropriate jail for Alquist to serve his conditional jail time.

Alquist petitioned the circuit court for a writ of mandamus, seeking to compel Hartman to allow Alquist to serve his jail time in Florence County. Alquist argued that Hartman violated a "positive and plain" duty under the law to effectuate Alquist's transfer to the Florence County jail, as authorized by the sentencing court in Alquist's criminal matter. The court determined that Hartman had no plain legal duty to transfer Alquist to another county, and it denied the petition. Alquist appealed, but he completed serving the conditional jail time before the first brief was filed in this matter.

In his brief, Hartman asserts that this matter is moot. We agree. "[A] case is moot when the decision sought by the parties cannot have any practical legal effect upon a then existing controversy." ***W.J.C. v. County of Vilas***, 124 Wis. 2d 238, 239, 369 N.W.2d 162 (Ct. App. 1985). As a matter of judicial economy, we generally decline to review a case as soon as mootness is shown, regardless of when or how it is shown. ***Reserve Life Ins. Co. v. La Follette***,

[1] In the same case, the State also charged Alquist with using a computer to facilitate a child sex crime. Alquist entered into a deferred prosecution agreement on that count.

108 Wis. 2d 637, 643 n.4, 323 N.W.2d 173 (Ct. App. 1982). We may, however, overlook mootness if the case presents an issue that falls within one of five exceptions:

> (1) the issue is of great public importance; (2) the issue involves the constitutionality of a statute; (3) the issue arises often and a decision from [an appellate] court is essential; (4) the issue is likely to recur and must be resolved to avoid uncertainty; or (5) the issue is likely of repetition and evades review.

Marathon County v. D.K., 2020 WI 8, ¶19, 390 Wis. 2d 50, 937 N.W.2d 901.

Here, a decision on whether a writ of mandamus should compel Hartman to serve his conditional jail time in Florence County would have no practical legal effect on the matter because Alquist has already served the jail time. Further, none of the exceptions to the mootness doctrine apply. Notably, Alquist did not file a reply brief addressing mootness, nor did he anticipatorily address mootness in his initial brief, thereby conceding that the doctrine applies. *See* ***United Coop. v. Frontier FS Coop.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to respond in reply brief to an argument made in respondent's brief may be taken as a concession). Moreover, we are not persuaded by our review of the record that the appeal presents an issue of great public importance, nor does the issue, as presented, involve the constitutionality of a statute. If, as Alquist asserts, this appeal presents a matter of first impression, it follows that the issue does not arise often, nor is it likely to recur and evade review.

Therefore, upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2021-22).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals