

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 16, 2012

A. John Voelker
Acting 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. 2011AP516

Cir. Ct. No. 2010CV2956

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. THOMAS STANTON,

PETITIONER-APPELLANT,

V.

MARK HEISE,

RESPONDENT-RESPONDENT.

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

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Thomas Stanton, pro se, appeals an order dismissing his petition for certiorari review of an inmate program review decision. The issues involve exhaustion of administrative remedies and mootness. We conclude the petition is moot and affirm the order.

¶2 Stanton is an inmate in the Wisconsin correctional system who was serving a life sentence for first-degree murder and armed robbery, both as party to a crime. Shortly after his release on parole, Stanton was placed in custody for causing injury while driving under the influence. That accident led to the revocation of Stanton's parole, and he was returned to prison to continue serving his original life sentence.

¶3 Stanton sought certiorari review of a December 2, 2009 Program Review Committee ("PRC") decision maintaining him at medium custody. Stanton had requested minimum security. Stanton argued the PRC's decision must be overturned because the PRC relied upon false information in reaching its decision. Stanton claimed the PRC relied on "false information stating that petitioner provided the codefendant in the case with a knife which was used to stab the victim numerous times." He also claimed the PRC exaggerated the injuries sustained by the mother and child that he crashed into while driving intoxicated.

¶4 On December 15, 2010, the circuit court ruled that Stanton failed to exhaust his administrative remedies, but granted him leave to exhaust the remedies so the court could give Stanton a decision on the merits.¹ At that hearing, Stanton informed the court that he was scheduled to go before the PRC for a new hearing that same day. A new inmate classification report was issued December 27, 2010. The report indicated that the committee unanimously recommended maintaining Stanton's medium custody classification. The report did not contain any statement that Stanton provided the knife to his co-defendant. Regarding the passengers of

¹ The offender complaint Stanton submitted following the circuit court's decision to allow him to exhaust his administrative remedies was rejected as untimely.

the car Stanton crashed into while intoxicated, the report simply stated, “[t]he victims suffered minor injuries.”

¶5 On February 10, 2011, the circuit court heard arguments on a motion to quash Stanton’s petition for writ of certiorari, on the grounds that the December 27 inmate classification report made the case moot. The court ruled that the matter was moot and signed an order quashing the petition and dismissing the writ. Stanton now appeals.

¶6 A decision to quash a writ of certiorari is treated the same as a decision to dismiss a complaint in a civil action. *State ex rel. Myers v. Swenson*, 2004 WI App 224, ¶6, 277 Wis. 2d 749, 691 N.W.2d 357. The issues of whether a petitioner has exhausted his administrative remedies and whether a case is moot are issues of law that we decide independently. *See State ex rel. L’Minggio v. Gamble*, 2003 WI 82, ¶11, 263 Wis. 2d 55, 667 N.W.2d 1; *State ex rel. Milw. County Personnel Review Bd. v. Clarke*, 2006 WI App 186, ¶28, 296 Wis. 2d 210, 723 N.W.2d 141.

¶7 A case is moot when its resolution will have no practical effect on an existing controversy. *City of Racine v. J-T Enters. of Am., Inc.*, 64 Wis. 2d 691, 700, 221 N.W.2d 869 (1974). In the context of a program review decision, the question of mootness turns on whether the petitioner could obtain some relief that he has not already achieved by virtue of a subsequent program review. *See State ex rel. Treat v. Puckett*, 2002 WI App 58, ¶19, 252 Wis. 2d 404, 418-19, 643 N.W.2d 515.

¶8 Stanton argues that he can still receive three forms of relief that he did not receive in his subsequent PRC hearing. First, he claims that his inmate classification report still states that the child passenger of the car he crashed into

sustained minor injuries, which Stanton insists is inaccurate. Stanton contends that if this information was corrected, he could receive a new hearing to be evaluated for minimum custody placement. Second, Stanton argues that his Department of Corrections files contain inaccurate information that must be expunged. Third, he claims that if he prevailed, he could recover costs and fees.²

¶9 We conclude the matter is moot because Stanton’s most recent PRC hearing did not rely on inaccurate information and provided all the relief he could obtain in this case. We acknowledge the inmate classification report resulting from the December 15, 2010 PRC hearing contains the statement “[t]he victims suffered minor injuries.” However, the PRC did not base its classification decision on whether the child received minor injuries. The PRC simply stated, “[s]ubject is parole violator who was released from life sentence for Homicide and armed robbery. He was returned to prison for violation[s] that included cause injury/operate while under influence.... Seriousness of violations is noted as cause injury/operate while under the influence is considered dangerous behavior.”

¶10 The PRC statement is supported by accurate information in the record. While intoxicated, Stanton drove through an intersection without making a full stop, hitting a car with a female operator and an eight-month-old child. The collision caused his truck to overturn on its side. A breathalyzer after the accident showed Stanton’s blood alcohol level was .17%. The female driver suffered lacerations, burns, abrasions and swelling above her right eyebrow. Whether the

² Stanton also argues his case is not moot because it is “capable of repetition, yet evading review.” However, program review decisions cannot evade review in certiorari actions. The reason the circuit court did not proceed to the merits of Stanton’s case is because he failed to exhaust his administrative remedies before he received a new PRC hearing.

child suffered minor injuries does not diminish the seriousness of Stanton's violation or the danger his actions created. As a result, any inaccuracies in the PRC's statement is insufficient to entitle Stanton to relief.

¶11 Moreover, Stanton may not use this case as a means to review all of his DOC files for inaccurate information. Certiorari is "available only for the purpose of reviewing a final determination." *State ex rel. Grzelak v. Bertrand*, 2003 WI 102, ¶12, 263 Wis. 2d 678, 665 N.W.2d 244. It is not a tool to seek judicial review of all administrative files regarding an inmate. The court is confined to the record, and certiorari does not allow the court to order review of agency records outside of the record. See *State ex rel. Conn v. Board of Trustees of Wis. Ret. Fund*, 44 Wis. 2d 479, 482, 171 N.W.2d 418 (1969). Therefore, review of Stanton's DOC files for inaccurate information is not relief he can obtain in this case.

¶12 Nor can Stanton recover fees and costs. WISCONSIN STAT. § 814.25(2) prevents prisoners from collecting fees or costs from the State, a state agency, or an individual defendant sued in an official capacity for actions relating to prison conditions. See *State ex rel. Harr v. Berge*, 2004 WI App 105, ¶¶1, 10-16, 273 Wis. 2d 481, 681 N.W.2d 282.

¶13 Stanton insists his mootness argument is supported by our recent decision in *Richards v. Graham*, 2011 WI App 100, 336 Wis. 2d 175, 801 N.W.2d 821. Stanton is wrong. In *Richards*, we held that a decision in Richards' favor on the merits could afford him relief that he had not yet received in the subsequent PRC review. While the Parole Commission in that case recommended that Richards be returned to work-release custody status, the PRC did not return

him to work-release status. Accordingly, Richards' claims on certiorari were not moot and we proceeded to consider the merits. *Id.*, ¶¶1-2, 12.

¶14 In the present case, there is no indication that the PRC relied on inaccurate information concerning minor injuries to the child in the automobile accident. Rather, the PRC relied upon general concerns regarding Stanton's dangerous behavior of choosing to operate a motor vehicle while intoxicated and causing an accident, shortly after being released on parole following a life sentence. We do not read into the PRC report any reliance on the alleged inaccurate information. Accordingly, Stanton's most recent PRC hearing provided all the relief he could obtain in this case and the circuit court correctly concluded the case was moot.

¶15 Because we resolve this matter on mootness grounds, we need not reach Stanton's argument concerning exhaustion of administrative remedies. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be reached.)

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2009-10).

