

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 30, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3181

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL.
WILLIAM J. EVERS,**

Petitioner-Appellant,

v.

**MOLLY SULLIVAN-OLSON,
DAN BENZER and TINA FUCHS,**

Respondents-Respondents.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

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

PER CURIAM. William Evers, an inmate at Racine Correctional Institution (RCI), appeals from an order dismissing his petition for a writ of certiorari. Evers alleged that the respondents, all department of corrections' employees, violated his statutory and due process rights when they denied his

application to the intensive sanctions program. We conclude that the trial court properly dismissed the petition, and therefore affirm.

In 1988, Evers began serving a twenty-year prison term. In 1992, he submitted a proposed plan for release to the division of intensive sanctions (DIS). DIS issued a report written by Dan Benzer¹ indicating that DIS placement would not occur due to Evers' long criminal record and his community's strong reaction against a DIS release.

In April 1993, Evers was denied parole. In May, he resubmitted his DIS plan. There is no record of any response to his submission. In October 1993, the program review committee (PRC) at RCI denied Evers' request for transfer to a minimum security institution.

Evers' petition for review only concerns Benzer's report of December 1992, declaring that a DIS release would not occur. He asserts that Benzer prepared the report based on an erroneous view of the facts and without proper investigation, and that it was a reviewable decision foreclosing the parole commission and PRC from even considering him for intensive sanctions release. He expressly states in his brief that his petition did not seek review of those subsequent decisions by the parole commission and PRC. Molly Sullivan-Olson and Tina Fuchs are identified as respondents because of their alleged involvement with, or acceptance of, Benzer's report.

The only decisions reviewable on certiorari are the ones made by the PRC and the parole commission which Evers chose not to challenge. A person is eligible for DIS release only if sentenced to the program, directed into the program by DOC, placed in it by the parole commission, or assigned to it by agreement as an alternative to parole or probation revocation. Section 301.048(2), STATS. DOC will not direct a prisoner into the program unless that prisoner is deemed eligible by the PRC of the place of confinement. WISCONSIN ADMINISTRATIVE CODE §§ DOC 333.04(1)(d) and 302.20. Here, Evers was not paroled and was not deemed eligible by the PRC because it did not even deem

¹ Dan Benzer is described as a supervisor in the division of intensive sanctions' Menasha office.

him eligible for a minimum security institution, let alone release from prison under DIS supervision. At best, Benzer's report was a recommendation, not a reviewable decision of the department on DIS eligibility. Because Evers choose not to seek review of the relevant decisions, the trial court properly dismissed the petition.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.