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DISTRICT IV

August 8, 2024

To:

Hon. Susan M. Crawford
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
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Ralph H. Jurjens III 310971
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You are hereby notified that the Court has entered the following opinion and order:

2023AP330

Ralph H. Jurjens III v. Elizabeth A. Tegels - Warden
(L.C. # 2022CV3148)

Before Kloppenburg, P.J., Blanchard, and Graham, 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).

Ralph Jurjens, III, appeals pro se a circuit court order denying his motion for reconsideration of the court's dismissal of his certiorari petition. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The circuit court dismissed Jurjens' certiorari petition on the ground that the petition was not timely filed within the applicable 45-day statute of limitations. The court concluded that Jurjens missed the October 31, 2022 deadline by one day.

Jurjens argues that he did not miss the deadline because the time to file his petition was equitably tolled between September 16 and September 24, 2022, while he waited for the Wisconsin Department of Justice (DOJ) to fulfill his request for the certification required by WIS. STAT. § 801.02(7)(d). He relies on *State ex rel. Locklear v. Schwarz*, 2001 WI App 74, 242 Wis. 2d 327, 629 N.W.2d 30. In *Locklear*, we tolled the statute of limitations for time that a prisoner waited to receive the DOJ certification. See *id.*, ¶¶26, 28, 32, 41. As Jurjens points out, we stated in *Locklear* that “the statute of limitations must be tolled while the prisoner waits for the DOJ to provide [the prisoner] with the required documentation.” *Id.*, ¶32.

However, as the circuit court explained, Jurjens takes the quoted language from *Locklear* out of context to support his tolling argument here. Tolling does not occur whenever a prisoner is waiting for requested documents. The tolling rule is “limited in scope” and “addresses only the disability inmates are under in meeting statutory filing deadlines because they must rely on the actions of others, who are beyond their control, in submitting necessary documents to the courts.” *State ex rel. Tyler v. Bett*, 2002 WI App 234, ¶20, 257 Wis. 2d 606, 652 N.W.2d 800. Prisoners must still “comply with the deadline to the extent they have control over the relevant documents.” *State ex rel. Walker v. McCaughtry*, 2001 WI App 110, ¶17, 244 Wis. 2d 177, 629 N.W.2d 17; see also *id.*, ¶18 (“[T]olling begins when the documents over which prisoners have control have been mailed, and all of the documents over which prisoners have no control have been requested.”).

Here, by Jurjens' own account, he received the DOJ certification on September 24, 2022, and therefore had control over it for 37 days before the statutory deadline of October 31, 2022. And, Jurjens has not argued that the time DOJ took to provide the certification caused any other delay that prevented him from meeting the October 31 deadline. Accordingly, we conclude that Jurjens is not entitled to equitable tolling for the time that he waited to receive the DOJ certification.

Jurjens argues that circuit court decisions in other cases and an unpublished summary decision of this court have allowed tolling for the time that prisoners have waited for DOJ certifications. However, even if those decisions allowed tolling in analogous circumstances, they are not binding precedent.²

For the first time in his reply brief, Jurjens raises a new tolling argument that he did not raise in the circuit court. Specifically, he argues that the time to file his certiorari petition should be tolled for the time it took prison officials to fulfill a copy request. This argument comes too late, and we decline to address it. See *Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981) (“We will not, as a general rule, consider issues raised by appellants for the first time in a reply brief.”); *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶10, 261 Wis. 2d 769, 661 N.W.2d 476 (“Generally, we do not consider legal issues which are raised for the first time on appeal.”).

² In the unpublished summary decision of this court that Jurjens cites, we did not decide any issue relating to tolling and DOJ certifications pertinent to this appeal. Rather, we noted that the parties, one of whom was Jurjens, appeared to agree for purposes of deciding a different issue that Jurjens' time to file a certiorari petition was tolled while he waited for a DOJ certification. See *State ex rel. Jurjens v. Dittmann*, No. 2018AP82, unpublished op. and order at 1 (WI App July 23, 2019).

Finally, in a separate argument, Jurjens contends that the circuit court erred by denying his request to use funds from his release account to pay for litigation expenses for his certiorari petition. The respondents contend that this issue is moot, and Jurjens has not replied to the respondents' mootness argument. In the absence of an opposing argument from Jurjens, and having now concluded that the court properly dismissed his certiorari petition, we conclude that this litigation expense issue is now moot, and we therefore address it no further. See *Portage County v. J.W.K.*, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509 (“Appellate courts generally decline to reach moot issues.”).³

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals

³ The record shows that the circuit court granted Jurjens' request for a filing fee waiver, so he did not need access to his release account to pay the filing fee.