

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 2, 1996

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. 95-1286

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DAVID J. RUSTAD,

Plaintiff-Appellant,

v.

MICHAEL SULLIVAN,

Defendant-Respondent.

APPEAL from an order of the circuit court for Dane County:
MARK A. FRANKEL, Judge. *Affirmed.*

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

PER CURIAM. David Rustad appeals from an order dismissing his petition for review of a parole revocation decision. Rustad filed his petition nine months after his parole was revoked and labeled it a petition for habeas corpus relief. The trial court construed it as a petition for a writ of certiorari, and dismissed it as untimely under the six-month laches rule. See *State ex rel.*

Czapiewski v. Milwaukee City Serv. Comm'n, 54 Wis.2d 535, 538-39, 196 N.W.2d 742, 743 (1972). We affirm the dismissal.

Certiorari is the only means to review a revocation decision. See *State ex rel. Johnson v. Cady*, 50 Wis.2d 540, 549-50, 185 N.W.2d 306, 311 (1971). Rustad argues that review by habeas corpus should also be available where review by certiorari is no longer possible. He cites *State ex rel. McMillian v. Dickey*, 132 Wis.2d 266, 392 N.W.2d 453 (Ct. App. 1986), for that proposition. However, in *McMillian*, the petitioner filed a timely certiorari petition and the court then failed to act on it for several years. This court held that habeas corpus provided a remedy for the claim that the trial court violated due process by delaying action on the certiorari petition. *Id.* at 279, 392 N.W.2d at 458. We did not hold that habeas corpus could substitute for certiorari review of the original decision. Because the latter remains the sole means for judicial review of a revocation decision, and because Rustad did not pursue it in a timely fashion, a remedy by other means is no longer available.

By the Court. – Order affirmed.

This opinion will not be published.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