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DISTRICT IV

September 11, 2013

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

2012AP783

State of Wisconsin ex rel. David K. Dellis v. Michael A. Dittman
(L.C. # 2011CV2928)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

David Dellis appeals a circuit court order that dismissed his action for certiorari review of a prison disciplinary decision on the grounds that it was untimely filed. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The circuit court found that Dellis received actual notice of the final administrative decision on his conduct report on or about April 11 or 12, 2011, making his certiorari petition due by May 26 or 27, 2011. *See* WIS. STAT. § 893.735(2) (setting forty-five day deadline). Dellis alleged that he initially mailed his certiorari petition to the Dane County Circuit Court on May 17, 2011, but that the petition was returned to him on June 7, 2011, because he had used an outdated address for the circuit court. The circuit court finally received Dellis' correctly re-addressed petition on June 9, 2011.

Dellis contends that the forty-five day deadline should be tolled under the prison mailbox rule from the time he initially sent his misaddressed petition because he had obtained the outdated address from a document in the prison library, could not control how long it took for the package to be returned to him, and had successfully used the incorrect address before. The respondents submitted an affidavit from the prison librarian noting that the document Dellis cited was a page from an outdated guide to the prison inmate complaint system published by a legal aid group, but averring also that Dellis had not asked the librarian for the address and that there were both legal directories and copies of that guide in the prison library which had been updated and contained the correct address. Dellis disputed these averments.

The circuit court did not find it necessary to resolve the factual dispute over where or when Dellis had obtained the outdated address because it concluded that the prison mailbox rule does not apply unless and until a prisoner has placed a properly addressed petition into the possession of prison authorities, and that no excusable neglect defense was available. We agree on both counts. *See State ex rel. Nichols v. Litscher*, 2001 WI 119, ¶27, 247 Wis. 2d 1013, 635 N.W.2d 292 (tolling does not occur until prisoner has placed properly addressed materials that have been properly paid for and that comply with relevant filing requirements into the possession

of prison officials); *Schiller v. DILHR*, 103 Wis. 2d 353, 355, 309 N.W.2d 5 (Ct. App. 1981) (strict adherence to certiorari deadlines is required).

IT IS ORDERED that the order dismissing Dellis' certiorari action is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals