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**DISTRICT IV**

September 12, 2013

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

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2011AP2731

State of Wisconsin ex rel. Harlan Richards v. Steven Landreman  
(L.C. # 2011CV1188)

Before Lundsten, Higginbotham and Sherman, JJ.

Harlan Richards appeals a circuit court order that affirmed, on certiorari review, a denial of Richards' request for release on parole. Richards raises two issues on appeal: (1) whether the circuit court erred in denying Richards' motion to supplement the certiorari return with the transcript of his parole hearing and the recording of a subsequent interpretive interview proceeding whose transcript Richards alleged to be inaccurate in multiple respects; and (2) whether the earned release review commission's decision was arbitrary and not supported by substantial evidence in the record. 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).<sup>1</sup> We affirm.

We begin by addressing the transcript issue. Inherent in the right to seek appellate review is a due process requirement that a litigant be provided with either a full transcript, or some “functional[] equivalent,” that “portrays in a way that is meaningful to the particular appeal exactly what happened” in the challenged proceeding. *State v. Perry*, 136 Wis. 2d 92, 99, 401 N.W.2d 748 (1987). Whether a particular transcript or other record of a challenged proceeding is sufficient to serve its necessary purpose on appeal is a question of law that is dependent upon such factors as: (1) the nature of the case; (2) the nature of the claim of error; (3) the passage of time from the date a transcript originally was, or should have been prepared; and (4) whether the trial was to the court or to a jury. *Id.* at 97-98. An appellant who seeks reversal on appeal based upon due process concerns arising from a missing transcript bears the initial burden of showing a “colorable need” for the transcript—that is, “that the portion of the transcript that is missing would, if available, demonstrate a ‘reviewable error.’” *Id.* at 100-01 (quoted source omitted).

With regard to the first and fourth factors, the proceeding at issue was an administrative parole hearing rather than a trial to either a court or a jury, which lessens the need for formality in how the proceeding was conducted and recorded. Due process can often be satisfied in an administrative hearing by a written summary of the proceedings without having a transcript produced. Here, the certiorari return includes a written opinion by the commission setting forth the basis for its decision, as well as several hundred pages of materials that were before the

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

commission. Therefore, the missing transcript is not as important as it would be if the primary evidence had been submitted by testimony alone or if a decision had been rendered by a jury verdict without an opinion.

As to the second factor, the relevant claim of error set forth in Richards' certiorari petition was that the commission's determination that Richards had not served sufficient time for punishment and that his release would pose too great a risk to the community was arbitrary and not supported by substantial evidence in the record. However, the evidence upon which the commission relied for those determinations was set forth in the written materials, and Richards has not persuaded us that there is anything that occurred at either his initial parole hearing or the subsequent interview where the decision was explained to him that is necessary to our review of his claim of error.

Finally, Richards argues that he could not be expected to remember and point to anything specific that was said at his parole hearing when more than a year had passed before he received his final administrative decision and filed his writ of certiorari. This argument misinterprets his burden. Obviously he did not need to provide any sort of verbatim account of what occurred at the parole hearing without having the transcript; he needed only to allege generally what occurred at the hearing—which he attended—and explain how he believed having a transcript of the proceeding would help him establish his specific claim of error. We do not believe that a year after the event was too long for him to be able to provide such a general account.

Considering all four factors, we are not persuaded that either the missing transcript of the parole review hearing or a recording of the interpretive interview that followed are necessary for a meaningful review of Richards' claim of error on this appeal. We therefore conclude that the

circuit court did not violate Richards' due process rights by refusing to order a supplement to the certiorari return.

We turn then to the substance of Richards' challenge to the parole determination. As noted above, the two reasons the commission gave for its decision were that Richards had not served sufficient time for punishment and that his release would pose too great a risk to the community. The commission based those conclusions primarily on the facts that Richards had taken lives on two separate occasions, and that the second homicide for which he is currently serving a life sentence was a brutal incident in which Richards stabbed his victim twenty-one times.

Richards claims that the need for punishment is not a valid criteria for parole. What he fails to understand is that the need for punishment is integrally related to the criteria of avoiding "[d]epreciation of the seriousness of the offense" under the administrative rules. *See* WIS. ADMIN. CODE § PAC 1.04. In other words, the committee could reasonably determine that it would unduly depreciate the seriousness of the homicide if Richards did not receive what the committee viewed as enough punishment for it.

Richards also contends that it was arbitrary for the committee to determine that he would still pose a great risk to the community when he has been a model prisoner and his security status has been reduced to the point where he has been able to spend substantial amounts of time over a period of years working in the community driving prisoner transport vehicles. The commission acknowledged that Richards had successfully completed all of the programming required and available to him, and that his conduct in prison had been positive. It also noted, however, that Richards had committed his second homicide just a month after having a prior sentence

discharged due to positive behavior. Therefore, it was not arbitrary for the committee to consider Richards' positive behavior in prison as less than an adequate guarantee of his behavior once released into a less structured environment in the community. We will not substitute our judgment for that of the committee as to the weight to give to competing factors showing that Richards would or would not still pose an unreasonable risk to the public.

IT IS ORDERED that the order denying Richards' petition for a writ of certiorari is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*