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**DISTRICT IV**

February 7, 2014

To:

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

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2012AP2024

State of Wisconsin ex rel. Timothy J. Herr v. David H. Schwarz,  
Division of Hearing and Appeals (L.C. # 2012CV103)

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

Timothy Herr appeals an order dismissing his petition for writ of certiorari. Herr's petition challenged a decision of the Division of Hearings and Appeals revoking Herr's parole in Jefferson County Case No. 1995CF2. On appeal, Herr argues that he received ineffective assistance of counsel and that the sentence he is serving on reconfinement is excessive. Based

upon our review of 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 summarily affirm.

Turning first to the ineffective assistance of counsel issues, we agree with the State that these issues are not proper subjects for review. There is no administrative, statutory or constitutional authority granting a right to assistance of counsel in a petition for writ of certiorari challenging a revocation decision. *State ex rel. Griffin v. Smith*, 2004 WI 36, ¶¶26-27, 31, 270 Wis. 2d 235, 677 N.W.2d 259. Because an ineffective assistance of counsel claim is premised upon the right to counsel, *see Strickland v. Washington*, 466 U.S. 668, 686 (1984), it follows that there is no constitutional right to effective assistance of counsel in proceedings where there was no right to counsel in the first place. *See Coleman v. Thompson*, 501 U.S. 722, 752 (1991).

We turn next to Herr's argument that his reconfinement sentence was excessive. Herr did not raise this claim in his certiorari petition. The certiorari petition requested that the circuit court review the administrative law judge's revocation decision, but did not request review of the reconfinement decision. Because Herr failed to raise the reconfinement claim in the circuit court, we deem the claim forfeited and decline to consider it. *See Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980).

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

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