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DISTRICT IV

March 18, 2014

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

2012AP1396

Walter J. Kuranda v. Larry Jenkins, Dept. of Corrections, Office of
the Secretary and Gary H. Hamblin (L.C. # 2012CV1989)

Before Lundsten, Higginbotham and Sherman, JJ.

Walter Kuranda, pro se, appeals an order of the circuit court dismissing his complaint filed pursuant to 42 U.S.C. 1983, which the circuit court construed as a writ of certiorari. 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).¹ We summarily affirm.

Kuranda, a prisoner, was found guilty of fighting, in violation of WIS. ADMIN. CODE § DOC 303.17 (Dec. 2006). The correctional institution where the fight occurred assessed Kuranda's medical expenses against him in the form of restitution. Kuranda initiated an action under 42 U.S.C. 1983 in circuit court, alleging that the respondents violated his Fourth and Fourteenth Amendment rights and his right to be free from search and seizure under the Wisconsin Constitution, Article I, § 11. The circuit court summarily dismissed Kuranda's state and federal constitutional claims for failure to state a claim pursuant to WIS. STAT. RULE 802.05(4). The court then construed the complaint as a writ of certiorari, and dismissed the action as untimely. Kuranda now appeals. Whether a complaint states a claim upon which relief may be granted is a question of law that we review de novo. *DeBruin v. St. Patrick Congregation*, 2012 WI 94, ¶10, 343 Wis. 2d 83, 816 N.W.2d 878.

On appeal, Kuranda argues that the respondents violated his Fourteenth Amendment rights when they took money from his inmate account without due process of law. We conclude, as did the circuit court, that Kuranda's complaint fails to state a procedural due process claim under 42 U.S.C. 1983. A procedural due process violation does not occur "unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 126, 110 S. Ct. 975 (1990). Certiorari review is an adequate post-deprivation remedy for due process purposes, and Kuranda could have pursued that remedy, but did not do so in a timely manner. *See Thorp v.*

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

Town of Lebanon, 2000 WI 60, ¶¶43, 53, 235 Wis. 2d 610, 612 N.W.2d 59. Because there was an adequate state remedy available to him, Kuranda's procedural due process claim under the Fourteenth Amendment fails to state a claim upon which relief may be granted. *See* WIS. STAT. § 802.05(4)(b)4.

Kuranda also argues on appeal that his substantive due process rights were violated when the respondents assessed restitution against him without sufficient evidence. This argument fails because, as this court stated in *Richards v. Cullen*, 150 Wis. 2d 935, 939-40, 442 N.W.2d 574 (Ct. App. 1989), "a prison inmate has no inherent or absolute interest in his or her personal property while incarcerated" and, thus, no basis for a substantive due process claim for property confiscation. Moreover, as the respondent's brief points out, the supporting evidence requirement for prison disciplinary actions is an element of procedural due process. *See Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1994). As explained above, Kuranda's complaint fails to state a claim for a violation of his procedural due process rights because he had an adequate state remedy available in the form of certiorari review, which he did not timely pursue, as we explain below.

We turn then to Kuranda's argument that he has a right of privacy to the funds in his prison trust account and that, therefore, the circuit court improperly dismissed his Fourth Amendment claim. We disagree. To claim a Fourth Amendment violation, one must establish a subjective and objective expectation of privacy. *See Al Ghashiyah v. McCaughtry*, 230 Wis. 2d 587, 601-02, 602 N.W.2d 307 (Ct. App. 1999). Under WIS. ADMIN. CODE § DOC 309.45 (Mar. 2010), the Department of Corrections is authorized to manage inmate funds and permit and forbid spending to achieve the objectives listed there. WISCONSIN ADMIN. CODE § DOC 309.45 authorizes the Department to impose restitution in addition to or in lieu of any major penalty, and

§ DOC 309.466(2) (Mar. 2010) authorizes the Department to take inmate funds as reimbursement for “incarceration costs, including legal loans and restitution.” In light of these regulations, we conclude that any privacy expectation Kuranda may have had with respect to his inmate trust account was not a reasonable one.

Finally, we address Kuranda’s argument that the circuit court improperly dismissed the action as untimely, after construing it liberally as a certiorari petition. This argument, too, fails. Under WIS. STAT. § 893.735(2), a prisoner’s petition for writ of certiorari is barred unless commenced within forty-five days of the decision. In this case, the warden issued a decision denying Kuranda’s appeal on March 16, 2011. The present action was filed on May 8, 2012, and therefore was untimely under § 893.735(2), such that the circuit court properly dismissed the action.

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

Diane M. Fremgen
Clerk of Court of Appeals