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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT IV**

June 12, 2014

To:

Hon. C. William Foust  
Circuit Court Judge  
Branch 14, Room 7109  
215 South Hamilton  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
Room 1000  
215 South Hamilton  
Madison, WI 53703

Kevin C. Potter  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Jody J. Schmelzer  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Rufus Lynch 273158  
Green Bay Corr. Inst.  
P.O. Box 19033  
Green Bay, WI 54307-9033

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

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2013AP353

Rufus Lynch v. Charles Cole (L.C. # 2012CV2597)

Before Lundsten, Sherman and Kloppenburg, JJ.

Rufus Lynch, pro se, appeals an order of the circuit court dismissing his action filed pursuant to 42 U.S.C. § 1983. 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.

Lynch, a prisoner, was found guilty of violating WIS. ADMIN. CODE § DOC 303.20, entitled Group Resistance and Petitions. Lynch was given 180 days of disciplinary separation.

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

He appealed unsuccessfully to the warden of the institution where he was incarcerated. Lynch also filed an inmate complaint, which was dismissed.

Lynch then filed a complaint in circuit court pursuant to 42 U.S.C. § 1983, alleging that his disciplinary hearing violated several provisions of WIS. ADMIN. CODE ch. DOC 303. The court dismissed the complaint for failure to state a claim, reasoning that the State had provided an adequate post-deprivation remedy in the form of certiorari review, but that Lynch failed to avail himself of that remedy. *See Thorp v. Town of Lebanon*, 2000 WI 60, ¶¶53-54, 235 Wis. 2d 610, 612 N.W.2d 59 (certiorari review is an adequate post-deprivation remedy for due process purposes). Whether a complaint states a cognizable claim upon which relief may be granted presents 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, Lynch does not dispute that he failed to pursue certiorari review, nor does he dispute that the circuit court properly dismissed the complaint on that basis. Rather, Lynch argues that he should have been permitted to amend his complaint in order to state claims related to religious freedom and racial discrimination under the First and Fourteenth Amendments. However, Lynch never requested leave to amend the complaint at the circuit court level and, thus, he has waived that argument. *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476 (this court generally will not consider issues raised for the first time on appeal).

Lynch also argues that the circuit court judge should have read his complaint as asserting First and Fourteenth Amendment claims, and should have warned him that the complaint was in danger of being dismissed so that he could clarify those claims. The problem with this argument

is that, although Lynch's complaint makes some references to religious exercise, it does not contain any allegation that his right to religious exercise was violated. Nor does the complaint make reference to any fact that could be construed as a claim of racial discrimination.

Lynch correctly asserts that pro se pleadings are to be construed liberally, and that Wisconsin follows a notice pleading approach when evaluating whether a claim for relief has been stated. See *bin-Rilla v. Israel*, 113 Wis. 2d 514, 520, 335 N.W.2d 384 (1983); *Hertlein v. Huchthausen*, 133 Wis. 2d 67, 72, 393 N.W.2d 299 (Ct. App. 1986). However, even notice pleading requires that the complaint give the defendant and the court ““a fair idea of what the plaintiff is complaining.”” *Midway Motor Lodge of Brookfield v. The Hartford Ins. Group*, 226 Wis. 2d 23, 35, 593 N.W.2d 852 (Ct. App. 1999) (quoted source omitted). Lynch's complaint, even when construed liberally, does not contain facts that would put the defendant and the court on notice that he wished to pursue claims for violation of his free exercise or equal protection rights under the First and Fourteenth Amendments. Accordingly, we conclude independently of the circuit court that Lynch has failed to state a claim upon which relief may be granted.

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*