



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT II

March 25, 2015

To:

Hon. Daniel J. Bissett
Circuit Court Judge
P.O. Box 2808
Oshkosh, WI 54903

Karla Z. Keckhaver
Asst. Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Melissa M. Konrad
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Larry George, #88022
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2014AP1974

State of Wisconsin ex rel. Larry George v. Brian Hayes
Administrator, Division of Hearings and Appeals
(L.C. #1999CV451)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

In this fifteen-year-old certiorari action, Larry George appeals from an order concluding that the Winnebago County Circuit Court was without authority to compel a recalculation of his sentence. We affirm because the matter has been fully litigated and the agency responsible for calculating sentences, the Wisconsin Department of Corrections (DOC), is not a party to this action. Based upon our review of the briefs and the record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(2013-14).¹

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

This is George's third appeal stemming from convictions for a 1986 sexual assault and 1987 theft. The tortuous procedural history, summarized in *George v. Schwarz*, 2001 WI App 72, 242 Wis. 2d 450, 626 N.W.2d 57 (*George I*), and *State ex. rel. George v. Schwarz*, Nos. 2012AP2320 and 2013AP969, unpublished slip op. (WI App Feb. 19, 2014), will not be repeated at length.

Essentially, the Division of Hearings and Appeals (DHA) revoked George's parole in 1999 and determined the period of his reincarceration, and the DOC calculated his sentence. George disagreed with the DOC's computation. The sticking points were the "start date" of his reincarceration sentence for the 1986 case and the concurrent or consecutive nature of his various sentences, one from another county. He sought certiorari review in the circuit court, filed several motions for reconsideration, and appealed to this court. See *George I*, 242 Wis. 2d 450, ¶¶1, 3-4, 7.² He also petitioned for review in the supreme court. *George v. Schwarz*, review denied, 2001 WI 114, 246 Wis. 2d 176, 634 N.W.2d 322. Most recently, he brought this action seeking a circuit court order to compel the DHA to cause his sentence to be recalculated. The circuit court concluded that it lacked authority to do so because of its limited scope of review in a certiorari action and ordered the action closed. George appeals.

We agree with the circuit court. The circuit court's authority in a certiorari action is limited to considering whether DHA stayed within its jurisdiction, acted according to law, did not act arbitrarily, and made a decision supported by the evidence. See *State ex rel. Richards v. Leik*, 175 Wis. 2d 446, 455, 499 N.W.2d 276 (Ct. App. 1993). This writ was fully litigated long

² While George's appeal was pending, the circuit court decided his third motion for reconsideration adversely to the State. We granted the State's petition for leave to appeal.

ago. As the court noted, George cannot “continue to bootstrap on this 1999 matter.” In any event, the circuit court is without authority to order DHA to perform a certain act such as starting his sentence on a certain day. *See id.*

Beyond that, if there was a sentence miscalculation, it was the DOC that made the error. The DOC is not a party to this action. Whether he has an alternative means to obtain judicial review of DOC’s sentence computation is beyond the scope of his certiorari action.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals