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**DISTRICT IV**

October 21, 2015

To:

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

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2015AP851

James Diggs v. Wisconsin Department of Corrections  
(L.C. # 2014CV1968)

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

James Diggs appeals an order dismissing the action he brought under WIS. STAT. § 227.40 (2013-14),<sup>1</sup> to challenge what he claims is a Wisconsin Department of Corrections (DOC) administrative rule requiring a person who commits a military sex offense to register as a sex offender and pay the applicable registration fees. The circuit court determined that Diggs's action was time barred. 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. We affirm the order of the circuit court.

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

While serving in the Navy, Diggs was court martialled upon a conviction of indecent assault. Upon release from his Navy confinement on December 29, 2001, Diggs signed a form required by federal law that notified him of state sex offender registration requirements. Diggs moved to Wisconsin and the DOC required him to register as a sex offender for ten years—until December 29, 2011. During his registration period, Diggs accumulated a \$400 arrearage in sex offender registration fees.

WISCONSIN STAT. § 301.45(1g)(g), requires sex offender registration by a resident of Wisconsin who “[h]as been found to have committed a sex offense by another jurisdiction.” Section 301.45(1d)(am)4. defines “found to have committed a sex offense by another jurisdiction,” to include “[s]entenced ... by a court martial for a violation that is comparable to a sex offense.” Diggs commenced this action under WIS. STAT. § 227.40, for a declaratory ruling that his court martial conviction of indecent assault is not a comparable sex offense and that the DOC’s requirement that Diggs register as a sex offender and pay the registration fees is invalid.

On the DOC’s motion to dismiss, the circuit court determined that Diggs’s opportunity to challenge the registration requirement was twelve-and-one-half years earlier when the requirement was imposed on him. The court held that “he can no longer obtain timely review of that 2001 determination.”<sup>2</sup>

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<sup>2</sup> The circuit court indicated that Diggs’s action was filed too late, “under a laches theory or any other construction of his case.” Diggs argues that the circuit court failed to make necessary findings to support a laches determination. Diggs is correct that laches is not a doctrine at issue here. However, we need not address a laches analysis. The question is whether Diggs timely sought judicial review of the registration requirement. “We will not reverse a correct decision of the trial court even though the reason for that decision may have been erroneously expressed.” *Seater Constr. Co. v. Rawson Plumbing, Inc.*, 2000 WI App 232, ¶18, 239 Wis. 2d 152, 619 N.W.2d 293.

Diggs argues that the DOC's determination that he was required to register as a sex offender was the implementation of a policy that constitutes a rule under WIS. STAT. § 227.01(13), and is subject to a declaratory judgment action under WIS. STAT. § 227.40. We need not decide that issue because Diggs could have challenged the DOC's determination, and the "rule," in an administrative review proceeding under WIS. STAT. § 227.52. See *Cholvin v. Wisconsin Dep't of Health & Family Servs.*, 2008 WI App 127, ¶21, 313 Wis. 2d 749, 758 N.W.2d 118 ("WISCONSIN STAT. § 227.40(2)(e) allows the validity of a rule to be determined in the context of an appeal of an agency decision ...."). Diggs's failure to timely seek judicial review of the registration requirement is dispositive. He is not permitted to use a § 227.40 declaratory judgment action as a late challenge to the DOC's determination. See *Sewerage Comm'n of City of Milwaukee v. DNR*, 102 Wis. 2d 613, 631, 307 N.W.2d 189 (1981) (sec. 227.40 is not available as an end run around judicial review of an agency's action). "Administrative action for which a statutory means of review is provided should not be subject to collateral attack in a different forum or under different procedures; where 'a specified method of review is prescribed by statute, the method so prescribed is exclusive.'" *Id.* (quoting *Superior v. Committee on Water Pollution*, 263 Wis. 23, 27, 56 N.W.2d 501 (1953)).

The DOC determined in December 2001 that Diggs was required to register as a sex offender. In 2001, WIS. STAT. § 227.52 (2001-02) did not include a time limit on when to bring an action for judicial review of an agency's decision that was not a result of a contested case hearing. However, a six-month deadline applied. *Collins v. Policano*, 231 Wis. 2d 420, 437, 605 N.W.2d 260 (Ct. App. 1999). Diggs's 2014 petition was not timely. The action was properly dismissed.

Upon the foregoing reasons,

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

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