



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 IV

January 27, 2016

To:

Hon. Juan B. Colás
Circuit Court Judge
215 South Hamilton, Br.10, Rm. 7103
Madison, WI 53703

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

S. Michael Murphy
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Dept. of Justice, Civil Litigation Unit
P.O. Box 7857
Madison, WI 53707-7857

Larry L. McAfee 151649
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

Oshkosh Correctional Institution
P.O. Box 3530
Oshkosh, WI 54903-3530

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

2015AP100

State of Wisconsin ex rel. Larry L. McAfee v. Kathleen Nagle and
D. Deankiewicz (L.C. # 2014CV2866)

Before Lundsten, Sherman, and Blanchard, JJ.

Larry McAfee appeals an order denying his petition for a writ of habeas corpus. Based upon our review of the briefs and record at conference, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

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

On July 18, 2014, McAfee's request for discretionary parole was denied. On October 13, 2014, McAfee filed a petition for writ of habeas corpus in the circuit court. The circuit court ruled that the denial of parole is reviewable only by certiorari and denied McAfee's petition.

The circuit court correctly denied McAfee's petition. "The refusal to grant discretionary parole is reviewable by common law certiorari." *State ex rel. Britt v. Gamble*, 2002 WI App 238, ¶15, 257 Wis. 2d 689, 653 N.W.2d 143; *Coleman v. Percy*, 96 Wis. 2d 578, 584-85, 292 N.W.2d 615 (1980). Habeas relief is not available where another adequate remedy, such as common law certiorari, exists. See *State ex rel. Dowe v. Circuit Court for Waukesha County*, 184 Wis. 2d 724, 729, 516 N.W.2d 714 (1994).

McAfee contends that the circuit court should have liberally construed his petition as seeking certiorari review. A court may look "beyond the legal label affixed by the [pro se] prisoner" in order to "treat a matter as if the right procedural tool was used." *State ex rel. McMillian v. Dickey*, 132 Wis. 2d 266, 279, 392 N.W.2d 453 (Ct. App. 1986), *abrogated on other grounds by State ex rel. Coleman v. McCaughtry*, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900. Doing so in this case, however, would not have helped McAfee. "An action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues." WIS. STAT. § 893.735(2). McAfee's petition, filed on October 13, 2014, was filed well beyond the time limit for review of a July 18, 2014 decision. Even if the circuit court had construed McAfee's habeas petition as a certiorari petition, it would have been denied by operation of § 893.735(2).

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals