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February 3, 2016

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

2015AP836 State of Wisconsin ex rel. Michael L. Crabtree v. Daniel Westfield (L.C. # 2014CV2244)

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

Michael Crabtree, pro se, appeals a circuit court order dismissing Crabtree's certiorari action.[1] 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 summarily affirm.

In July 2014, Crabtree filed a petition in the circuit court titled "Petition for Writ of Extraordinary Remedies," naming two Department of Corrections (DOC) wardens as respondents. Crabtree asserted that he had been denied due process in disciplinary proceedings and a transfer to a different institution. Crabtree requested that the circuit court "issue an extraordinary writ to bring up for review and determination of all disciplinary and security classification."

The circuit court construed Crabtree's petition as a petition for a writ of certiorari and issued a writ of certiorari in August 2014. In September 2014, Crabtree moved to amend his petition to include a jury demand and a claim for damages under 42 U.S.C. § 1983 for violation of his due process rights, as well as a declaratory judgment that the DOC's administrative code manual and 42 U.S.C. § 1997e(e) are unconstitutional. The proposed amended complaint set

[1] While Crabtree's certiorari petition was pending in the circuit court, Tayr Kilaab Al Ghashiyah moved to intervene. The circuit court dismissed Crabtree's certiorari action without addressing Ghashiyah's motion to intervene. Both Crabtree and Ghashiyah signed the notice of appeal from the final order dismissing Crabtree's certiorari action. Additionally, both Crabtree and Ghashiyah signed the appellants' brief, and one of the issues raised in the appellants' brief is whether the court erred by failing to allow Ghashiyah to intervene. However, there is no written order denying the motion to intervene in the record. Because a motion to intervene commences a special proceeding within an action, ***Wellens v. Kahl Ins. Agency, Inc.***, 145 Wis. 2d 66, 69, 426 N.W.2d 41 (Ct. App. 1988), an order denying a motion to intervene is separately appealable as of right, *see* WIS. STAT. § 808.03(1) (2013-14). We lack jurisdiction to review the intervention issue in the absence of a written order by the circuit court resolving the special proceeding. *See* WIS. STAT. § 808.03(1). As to the remaining issues raised by the appellants, we refer to those issues as raised by "Crabtree." For purposes of this appeal, we need not resolve whether those arguments are properly joined by Ghashiyah.

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

forth the additional claims and named additional defendants. Crabtree cited WIS. STAT. § 802.09(1) for the proposition that a party may amend his or her pleading once as a matter of course within six months of filing.

In April 2015, the circuit court affirmed the disciplinary and transfer decisions of the DOC and dismissed the writ of certiorari, without addressing Crabtree's motion to amend his petition.

Crabtree argues first that he commenced this action as a class action to challenge the unconstitutional practices of the DOC as to himself and all similarly situated incarcerated persons. However, Crabtree is not a lawyer, and therefore may not represent others in court. *See* ***State v. Kasuboski***, 87 Wis. 2d 407, 421-22, 275 N.W.2d 101 (Ct. App. 1978) ("It is unlawful for any person not licensed to practice law in this state to appear for, or on behalf of, another in any court of record in this state."). Accordingly, the circuit court had no basis to allow Crabtree to pursue a class action.

Next, Crabtree argues that the circuit court erred by failing to address the 42 U.S.C. § 1983 claims asserted in Crabtree's proposed amended complaint.[2] He contends that he was entitled to amend his complaint once as a matter of course within six months under WIS. STAT.

[2] We agree with the State that the circuit court implicitly denied Crabtree's motion to amend his certiorari petition to include 42 U.S.C. § 1983 claims by dismissing the certiorari action without addressing the motion. *See* ***State ex rel. Treat v. Puckett***, 2002 WI App 58, ¶24 n.14, 252 Wis. 2d 404, 643 N.W.2d 515.

§ 802.09(1), and that he timely filed his amended petition.[3] In support of the contention that both actions should have proceeded in this case, Crabtree contends that he was required to raise his § 1983 claims here because he would otherwise be precluded from bringing those claims in a future action.[4]

The State responds that the circuit court's implicit denial of Crabtree's motion to amend his certiorari petition to add 42 U.S.C. § 1983 claims was proper because the actions were not appropriate for joinder and Crabtree would not be precluded from pursuing a separate § 1983 action. *See* ***Hanlon v. Town of Milton***, 2000 WI 61, ¶¶4, 21-26, 235 Wis. 2d 597, 612 N.W.2d 44 (explaining differences between certiorari and § 1983 actions, and holding that § 1983 action was not precluded based on prior certiorari action). The State contends that Crabtree was not entitled to join the claims under WIS. STAT. § 803.02(1) because the two claims involve different defendants. It then contends that Crabtree could not join the separately named defendants under WIS. STAT. § 803.04(1) because the claims for relief do not arise out of the same "transactions or

[3] Crabtree argues that the respondents conceded that Crabtree was entitled to amend his petition in the circuit court by failing to object to the proposed amended petition. However, Crabtree has not cited any authority for the proposition that a circuit court is required to allow joinder of actions as asserted in a proposed amended petition if the opposing parties do not object. We are not persuaded that the circuit court was required to allow joinder as requested in Crabtree's amended petition based on the respondents' position in the circuit court.

[4] Crabtree also contends that certiorari review is an inadequate postdeprivation remedy in this case, and that incarcerated persons should have the option to pursue 42 U.S.C § 1983 claims rather than certiorari actions based on claimed constitutional violations. However, Crabtree initiated this action in the circuit court as a writ action claiming that the DOC violated his constitutional rights during prison discipline and security classification procedures. Accordingly, regardless of whether § 1983 is an available remedy to Crabtree, this action properly proceeded as a certiorari action.

occurrences."[5] Crabtree does not assert that he could meet the statutory criteria for joinder of the claims or defendants. Accordingly, we discern no basis to reverse the court's implicit decision denying Crabtree's motion to amend his certiorari petition to join claims under § 1983.

Finally, Crabtree contends that he was denied due process during his disciplinary and security reclassification proceedings.[6] On appeal from an order dismissing a petition for certiorari review of a prison disciplinary decision, we examine only whether the DOC's decision was within its jurisdiction, according to law, arbitrary or unreasonable, and supported by substantial evidence. *See* ***State ex rel. Anderson-El v. Cooke***, 2000 WI 40, ¶15, 234 Wis. 2d 626, 610 N.W.2d 821. Part of this analysis is whether the DOC followed its own rules and complied with due process requirements. *See* ***State ex rel. Curtis v. Litscher***, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43. We owe no deference to the circuit court's decision on our review of the DOC's disciplinary decisions. *See* ***Anderson-El***, 234 Wis. 2d 626, ¶15. We address Crabtree's specific contentions in turn.

Crabtree contends first that he was denied due process in connection with his transfer to an institution with more adverse conditions of confinement. However, in ***Meachum v. Fano***,

[5] The State asserts, in conclusory fashion, that the certiorari action arises from the agency decision and that the 42 U.S.C. § 1983 claims arise from Crabtree's separate allegations of "retaliation and maltreatment." The State does not explain what separate factual allegations it believes underlie each of the two claims. However, because Crabtree does not develop any argument that joinder of the defendants is appropriate under WIS. STAT. § 803.04(1), we are not persuaded that the court erred by denying joinder of the defendants.

[6] As part of this argument, Crabtree argues that the DOC was required to apply the administrative code in effect at the time of his conviction, rather than at the time of his misconduct and disciplinary proceedings. However, Crabtree does not cite any authority for the proposition that he is entitled to application of the administrative rules in effect at the time of his conviction. Accordingly, we reject Crabtree's contention that we must apply the rules in effect at the time of his conviction.

427 U.S. 215, 225 (1976), the Supreme Court held that there is no due process right to confinement in a particular institution within a prison system, even if "life in one prison is much more disagreeable than in another." Thus, there is no liberty interest involved in transfer from one institution to another unless the transfer "impose[s] an atypical and significant hardship." ***Wilkinson v. Austin***, 545 U.S. 209, 224 (2005). Here, Crabtree asserts only that his transfer to the Wisconsin Secure Program Facility exposed him to harsher conditions of confinement; he does not develop an argument that the conditions of confinement rose to the level of "atypical and significant hardship" recognized in ***Wilkinson***.

Crabtree also contends that the DOC disciplinary and reclassification decisions were made in retaliation for his religious and legal activities.[7] However, Crabtree has not cited anything in the record that would support his claims of retaliation. Accordingly, we reject this contention.

Next, Crabtree argues that reissuance of the conduct report following the dismissal of the original conduct report on procedural grounds violated double jeopardy. However, the initial conduct report in the record indicates it was withdrawn prior to a hearing, and the report was to be reissued. Accordingly, Crabtree's double jeopardy argument fails at the outset. *See* ***North Carolina v. Pearce***, 395 U.S. 711, 717 (1969), *overruled on other grounds by* ***Alabama v. Smith***,

[7] In connection with Crabtree's retaliation argument, Crabtree contends that the respondents failed to provide a complete copy of the records in the certified writ by failing to include his inmate classification report dated September 29, 2014, which remanded the reclassification to the reclassification committee for rehearing. However, the circuit court issued the writ of certiorari on August 15, 2014, and Crabtree does not explain why the decision to hold a rehearing would be relevant to Crabtree's certiorari action. Additionally, Crabtree appears to raise arguments related to the rehearing following remand in September 2014. Because that procedure occurred after the writ was issued, it is outside the scope of this writ action.

490 U.S. 794 (1989) (double jeopardy protects against "a second prosecution for the same offense after acquittal[,] … a second prosecution for the same offense after conviction[,] [a]nd … multiple punishments for the same offense").

Crabtree also argues that he was denied his due process right to notice of the time and date of the disciplinary hearing, a timely hearing, a written decision at the conclusion of the disciplinary hearing, and an adequate written explanation of the DOC's decisions. However, the record reveals that the DOC complied with its rules for notice, hearing, and explanation of its decision. Crabtree was provided a written conduct report advising Crabtree of the charges and written notice of his right to a hearing on June 23, 2014. *See* WIS. ADMIN. CODE § DOC 303.80(1) (2014). Crabtree was given a disciplinary hearing on July 1, 2014, within the twenty-one days provided for a disciplinary hearing. *See* § DOC 303.80(3). Crabtree had to have been aware of the DOC's decision on the date of the hearing because he appealed the decision to the warden on that same date. *See* § DOC 303.80(6)(g). Crabtree was provided the DOC's written disciplinary decision on July 8, 2014, which explains the DOC's reasons and the evidence it relied upon. *See* § DOC 303.80(6)(h). Crabtree has not developed an argument that additional steps were necessary to satisfy Crabtree's due process rights. *See* ***Wolff v. McDonnell***, 418 U.S. 539 (1974).

Crabtree also argues that the DOC unlawfully denies credit towards disciplinary dispositions for time in temporary lockup and unlawfully adopted a "step-program" policy. However, Crabtree does not assert that the DOC made any decision related to temporary lockup credits or the step-program in his disciplinary or reclassification proceedings that are the subject of this case. Accordingly, the legality of those policies is outside the scope of our review in this certiorari action.

Additionally, Crabtree contends that the respondents are bound by the settlement agreement Crabtree submitted to the court and that respondent's counsel should be sanctioned for failing to comply with court orders and for fraud on the court. These allegations are insufficiently supported by facts or law to warrant further discussion. In the same vein, to the extent that this opinion does not specifically address any arguments raised by Crabtree, we have considered those arguments as best we understand them and deem them insufficiently developed to warrant a response.

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals