



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

March 1, 2016

To:

Hon. John C. Albert
Circuit Court Judge
Dane County Courthouse
215 South Hamilton, Br 3, Rm 4105
Madison, WI 53703

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

Daniel P. Lennington
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

Scott A. Heimermann 159200
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

Waupun Correctional Institution
P.O. Box 351
Waupun, WI 53963-0351

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

2014AP1160	State of Wisconsin ex rel. Scott A. Heimermann v. William Pollard (L.C. # 2013CV361)
2014AP1161	State of Wisconsin ex rel. Scott A. Heimermann v. William Pollard (L.C. # 2013CV1508)

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

Scott Heimermann, pro se, appeals circuit court orders dismissing Heimermann's certiorari actions seeking review of prison disciplinary decisions and denying reconsideration.

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 (2013-14).¹ We summarily affirm.

Heimermann filed a petition for writ of certiorari in January 2013, seeking review of a disciplinary decision finding Heimermann guilty of enterprises and fraud for writing letters to the governor seeking a business loan. He filed a second petition for writ of certiorari in April 2013, seeking review of another disciplinary decision, also finding Heimermann guilty of enterprises and fraud for writing letters to the governor seeking a business loan. The circuit court dismissed both actions on February 25, 2014. Heimermann moved for reconsideration, which the circuit court denied.

Our review in a certiorari action is limited to the record created before the administrative agency. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We will consider only whether: (1) the agency stayed within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that the agency might reasonably make the order or determination in question. *Id.* “The test on certiorari review is the substantial evidence test, under which we determine whether reasonable minds could arrive at the same conclusion the [agency] reached.” *Id.* Our analysis includes whether due process of law was afforded and whether the agency followed its own rules. *State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980).

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

Heimermann contends first that the evidence from his disciplinary proceedings was insufficient to establish that Heimermann was guilty of enterprises and fraud. *See* WIS. ADMIN. CODE § DOC 303.32(1) (Dec. 2000) (providing that “[a]ny inmate who engages in a business or enterprise, whether or not for profit, or who sells anything except as specifically allowed under other sections is guilty of [enterprises and fraud]”). Heimermann argues that he was entitled to pursue business loans as part of the plan he developed with his Department of Corrections (DOC) case manager to work on his career goals. He also argues that he wrote some of the letters to the governor on behalf of his mother, who Heimermann contends is his power of attorney, and thus those letters fall within the exception allowing “[a]n inmate who was owner or part owner of any lawful business or enterprise prior to sentencing [to] communicate with the inmate’s manager, partner, or attorney concerning the management of the enterprise or business.” *See* WIS. ADMIN. CODE § DOC 303.32(1)(a). We disagree.

The certiorari records contain evidence that Heimermann wrote letters to the governor and drafted letters for his mother to sign, all seeking a business loan for Heimermann’s business. That evidence was sufficient to show that Heimermann violated the rule against enterprises and fraud by engaging in a business. *See* WIS. ADMIN. CODE § 303.32(1) (Dec. 2000). There is no exception under the rule that permits an inmate to engage in a business if the inmate has a case plan that includes working on career goals and the inmate owns a business. Further, while the rule allows an inmate to communicate with his attorney concerning the management of the business, it does not allow an inmate to draft business loan requests for a power of attorney to sign. In sum, the evidence shows that Heimermann violated the rule and Heimermann has not pointed to any evidence that would bring him within an exception to the rule. Accordingly, the evidence was sufficient to support the disciplinary decisions.

Heimermann also contends that the circuit court erred by failing to issue a decision as to Heimermann's claims for damages and declaratory and injunctive relief. He argues that he stated a Takings Clause claim by asserting that the DOC deprived him of his property right in the letters seeking a business loan and his property interest to pursue his career goals. He argues that he is entitled to just compensation for that taking; an injunction preventing the DOC from interfering with Heimermann's property rights; and a declaratory judgment that WIS. ADMIN. CODE § 303.32(1) (Dec. 2000) is unconstitutional. However, relief in a certiorari action is limited to a review of the administrative agency's decision, and does not include damages or other forms of relief that Heimermann sought. See *Hanlon v. Town of Milton*, 2000 WI 61, ¶¶13-18, 235 Wis. 2d 597, 612 N.W.2d 44 (explaining that money damages are not available within a certiorari action, which is limited to a review of the agency's decision). Accordingly, the circuit court properly denied Heimermann relief that was outside the scope of these certiorari actions.

Finally, Heimermann contends that the circuit court erred by denying his motion for reconsideration. He again argues that he was entitled to damages and declaratory and injunctive relief. However, as we have explained, no such relief was available. Accordingly, we affirm.

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals