



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

April 12, 2017

To:

Hon. Karen L. Seifert
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

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

Abigail Potts
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

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

Brian K. Schessler, #259428
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

Special Litigation & Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2016AP1399

State of Wisconsin ex rel. Brian K. Schessler v. Wisconsin Parole
Commission (L.C. # 2016CV514)

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

Brian K. Schessler appeals pro se from an order dismissing his petition for a writ of habeas corpus. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

Schessler is a Wisconsin prisoner currently incarcerated at Oshkosh Correctional Institution. On October 28, 2015, the parole commission denied his request for parole. On May 24, 2016, Schessler filed a petition for a writ of habeas corpus that sought to challenge that decision. The circuit court dismissed the petition. This appeal follows.

On appeal, Schessler contends that the circuit court erred in dismissing his petition for a writ of habeas corpus. Whether habeas corpus relief is available to a petitioner is a question of law that we review de novo. *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12.

We conclude that habeas corpus relief was not available to Schessler because he had another adequate remedy to raise his challenge, *i.e.*, a petition for a writ of certiorari. *See id.*, ¶8 (habeas corpus relief is not available where an otherwise adequate remedy at law exists); *State ex rel. Britt v. Gamble*, 2002 WI App 238, ¶15, 257 Wis. 2d 689, 653 N.W.2d 143 (the refusal to grant parole is reviewable by certiorari).

Even if we were to liberally construe Schessler's filing as a petition for a writ of certiorari, dismissal was still appropriate. That is because "[a]n 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). Schessler's petition, filed on May 24, 2016, was well beyond the time limit for review of the October 28, 2015 decision.

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