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**DISTRICT IV**

*Amended June 7, 2017*

May 16, 2017

To:

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

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2016AP1662

State of Wisconsin ex rel. Harlan Richards v. Dean Stensberg and  
Danielle LaCost (L.C. # 2016CV117)

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

Harlan Richards, pro se, appeals a circuit court order denying his petition for writ of certiorari and affirming a decision of the Wisconsin Parole Commission to deny Richards release on parole and increase the defer period for his next parole consideration from 12 months to 36 months. 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 (2015-16).<sup>1</sup> We summarily affirm.

The scope of our review on certiorari is identical to that of the circuit court. *State ex rel. Staples v. DHSS*, 136 Wis. 2d 487, 493, 402 N.W.2d 369 (Ct. App. 1987). Judicial review on certiorari is limited to whether the agency’s decision was “within its jurisdiction, the agency acted according to law, its decision was arbitrary or oppressive[,] and the evidence of record substantiates the decision.” *Id.* On appeal, Richards focuses on the last two factors, arguing that the Commission’s decision to increase his defer period was arbitrary and not supported by substantial evidence.

Richards, who is serving a life sentence imposed in 1984 for first-degree murder, has appealed prior decisions of the Parole Commission. In *Richards v. Graham*, 2011 WI App 100, ¶¶16-17, 336 Wis. 2d 175, 801 N.W.2d 821, Richards argued that, because he had completed programs, received positive work evaluations, and did not receive any misconduct reports during his most recent deferment, the Commission’s decision to increase the defer period from 10 months to 12 months was unreasonable, arbitrary, and not supported by the record. We rejected that argument then, and we reject his similar argument now.

In this appeal, Richards asserts that he has done “everything expected of him” and notes his “perfect conduct record,” educational achievements, and successful completion of 19 months of work release. He highlights these points as support for his argument that the Commission’s decision was arbitrary and not supported by substantial evidence. However, as we stated in

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

*Graham*, 336 Wis. 2d 175, ¶18, “Richards provides no authority ... for the proposition that the Commission may issue a deferment that is longer than the previous deferment only when the inmate has engaged in misconduct during the defer period, and we are unaware of any such authority.”

Under the Wisconsin Administrative Code, institutional conduct and program participation are among the factors to be taken into consideration for parole recommendations, but they are not the only factors. *See* WIS. ADMIN. CODE § HSS 30.05(7) (Dec. 1982). Other factors include whether the inmate has served sufficient time for punishment, considering the nature and severity of the offense, and whether the inmate poses an unreasonable risk to the public. *Id.* Here, the Commission considered Richards’ positive conduct within the institution, his completion of programs and his educational gains, as well as letters supporting his release. However, the Commission also properly considered the fact that Richards had committed a violent crime that resulted in loss of life, in support of its conclusion that Richards should serve additional time to address the seriousness of the offense, and that he should not be released in the near future. In support of its conclusion that Richards posed an unreasonable risk to the public, the Commission noted that Richards had reoffended on two separate occasions after being sentenced for prior crimes--once when he was released from prison after serving a sentence for manslaughter, and once after being discharged early from a probation term he received for delivery of LSD. In light of these facts, which are supported by the record, we reject Richards’ argument that the Commission’s decision was arbitrary and not supported by substantial evidence.

Richards also asserts that the Commission’s decision is based on factual error. Specifically, Richards disputes the Commission’s statement that he poses a risk to “law abiding

citizens.” Richards attacks the character of the man he killed in 1984, detailing the victim’s criminal history in an effort to bolster his assertion that he was acting in self-defense when he stabbed the victim repeatedly. However, the question of whether Richards acted in self-defense at the time he committed those crimes is beyond the scope of our limited review on certiorari. Nothing in Richards’ briefs persuades us that the Commission’s decision was based on factual error.

Finally, Richards argues that the Commission’s decision initially to increase his defer period from 12 months to 24 months and then, upon review by the Commission’s chairperson, to 36 months, constituted a change in release potential. He argues that the Commission’s decision violates common law concepts of due process and fair play, since the facts remain the same regarding his underlying crime. We are not persuaded by this unsupported argument. Richards still has the potential of release after the current 36-month defer period, if the Parole Commission determines that he has met the criteria for release. As discussed above, that is not the case here.

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

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*Diane M. Fremgen  
Clerk of Court of Appeals*