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**DISTRICT IV**

September 15, 2017

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

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2016AP1192

State of Wisconsin ex rel. Eric Alston v. Judge William Hanrahan  
and Judge Juan Colas (L.C. #2016CV465)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Eric Alston appeals an order denying his motion for transcripts. 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 affirm.

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

After Alston filed a notice of appeal from a decision denying his petition for habeas corpus, Alston moved for preparation of transcripts without cost to him. He sought the transcripts under *State ex rel. Girouard v. Jackson County Circuit Court*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990). The transcripts he sought were not of proceedings held in the habeas case, but were instead of proceedings from an unidentified criminal case held in 2012.

Alston's transcripts motion was denied by a different judge than the judge who denied Alston's habeas petition. On appeal, Alston argues that the judge who decided the transcripts motion was biased by what Alston alleges was ex parte communication with a "Special Investigation Unit" that gave the judges a presentation about certain offenders whom the unit wanted judges to sanction severely in future cases, and that Alston was one of those offenders.

Alston appears to be raising this disqualification issue regarding the transcripts motion for the first time on appeal. Although there does not appear to be any reason that Alston would have known in advance that the transcripts motion would be decided by this judge, Alston could have raised the disqualification issue by filing a motion for reconsideration.

We usually do not address issues that are raised for the first time on appeal, *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), and we see no reason to do that in this appeal. Because Alston did not raise this disqualification issue in circuit court, we have no decision by the judge on the need for disqualification, and no record related to that issue. Therefore, we do not further address the disqualification issue.

The circuit court denied the transcripts motion because Alston did not support his claim of indigency by affidavit. In the brief of the respondents, they argue that the transcripts motion was properly denied for that reason. In reply, Alston argues that he sought those transcripts,

from a criminal case other than the one from which he sought relief in the habeas petition, to show that one of the respondent judges did not disclose his contact with the Special Investigation Unit in that case, either.

We conclude that the motion for transcripts was properly denied. Alston has not given us any reason to believe that the circuit court used the requested transcripts in issuing its decision denying the habeas petition. Because we normally decide appeals based on the record that was before the circuit court at the time of its decision, the requested transcripts would not be proper to include in the appellate record.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*