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**DISTRICT IV**

September 25, 2017

To:

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

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2016AP2427

State of Wisconsin ex rel. Levelt Musgraves v. Mark Heise and  
M. Treder (L.C. # 2016CV2073)

Before Sherman, Blanchard, and Fitzpatrick, 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).**

Levelt Musgraves appeals a circuit court order dismissing his petition for review of an administrative agency decision. 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.

Musgraves is an inmate serving a life sentence and is currently confined at Oshkosh Correctional Institution (OCI). The respondents are employees of the Department of Corrections who were involved in the review of Musgraves's custody classification level. Musgraves filed a petition in the circuit court under WIS. STAT. ch. 227, challenging the decision of the reclassification review committee at OCI to deny him minimum custody classification. The committee had determined that Musgraves did not meet the requirements for minimum custody classification because he had not reached parole eligibility. *See* WIS. ADMIN. CODE § DOC 302.08(2)(a) (through July 2017).

The circuit court issued an order construing Musgraves's pleading as a petition for writ of certiorari, stating, "In reviewing Mr. Musgraves[']s filing liberally, while also noting that he would be precluded from filing his action under [WIS. STAT. ch.] 227, the Court determines that Mr. Musgraves's action is intended to be filed as a writ of certiorari." The circuit court issued a writ ordering the respondents to certify and return the record of Musgraves's reclassification proceedings. Musgraves sent a letter to the circuit court rejecting the court's construal of his pleading as a petition for writ of certiorari. He insisted that he was bringing his action under ch. 227. The circuit court then issued an order withdrawing the writ. Musgraves submitted additional filings to the circuit court, continuing to seek leave to proceed under ch. 227. The

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

circuit court then issued an order dismissing the case *sua sponte* for failure to state a claim upon which relief could be granted. Musgraves now appeals.

Whether a pleading states a claim for relief is a question of law that we review de novo. *State ex rel. Treat v. Puckett*, 2002 WI App 58, ¶9, 252 Wis. 2d 404, 643 N.W.2d 515. On appeal, Musgraves argues that the circuit court erred by not permitting him to proceed under WIS. STAT. ch. 227. However, WIS. STAT. § 227.03(4) expressly states,

The provisions of this chapter relating to contested cases do not apply to proceedings involving the revocation of community supervision or aftercare supervision under s. 938.357(5), the revocation of parole, extended supervision, or probation, the grant of probation, prison discipline, mandatory release under s. 302.11, or any other proceeding involving the care and treatment of a resident or an inmate of a correctional institution.

Where, as here, no statutory provision exists for judicial review of a committee action, the proper mechanism for review is by certiorari. *See State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980). The record demonstrates that the circuit court construed Musgraves's complaint liberally, as required by *State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 164-65, 582 N.W.2d 131 (Ct. App. 1998), and determined that the action was intended to be filed as a writ of certiorari. When Musgraves then objected to the construal of the action as a certiorari action and insisted on proceeding under WIS. STAT. ch. 227, the circuit court properly dismissed the case, since a custody reclassification decision is a "proceeding involving the care and treatment of a resident or an inmate of a correctional institution" and, therefore, is expressly excluded from the type of decision for which judicial review may be sought under that chapter. *See* WIS. STAT. § 227.03(4).

Accordingly,

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.

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