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DISTRICT IV

November 28, 2017

To:

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

2017AP206

State of Wisconsin ex rel. Donte D. Whitlock v. Brian Hayes, Jose Alvarado, and Genoveva Calderon (L.C. # 2016CV1016)

Before Lundsten, P.J., Sherman 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).

Donte Whitlock appeals the circuit court's order that denied his petition for certiorari review of his probation revocation. After reviewing the record, we conclude at conference that

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the dismissal on the grounds that the petition was untimely.

WISCONSIN STAT. § 893.735(2) sets a 45-day deadline for Wisconsin prisoners seeking certiorari relief from an administrative decision. Under the statute, the time limit for seeking certiorari review begins to run when an inmate has “actual notice of the decision or disposition” giving rise to his cause of action. The filing deadline is tolled “when the documents over which prisoners have control have been mailed, and all of the documents over which prisoners have no control have been requested.” *State ex rel. Walker v. McCaughtry*, 2001 WI App 110, ¶18, 244 Wis. 2d 177, 629 N.W.2d 17.

Here, Whitlock does not dispute that he filed his certiorari petition more than seven months after his probation had been revoked, well after the statutory deadline had passed. He does not claim any substantial delay in his receipt of the probation revocation decision, or contend that he actually mailed the documents within his control within 45 days. Instead, he asserts that his delinquency should be excused because his legal materials were inaccessible during a lengthy intake process and a period of administrative segregation and because he is taking anti-psychotic and pain medications. The reasons for Whitlock’s delinquency are irrelevant, however, because the deadline is jurisdictional and cannot be extended based upon a mere showing of good cause. *See State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶5, 235 Wis. 2d 63, 611 N.W.2d 774 (a prisoner’s failure to meet the statutory filing deadline for a certiorari claim deprives the court of subject matter jurisdiction).

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

IT IS ORDERED that the order dismissing Donte Whitlock's certiorari petition is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals