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DISTRICT II

January 17, 2018

To:

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

2017AP377-CR

State of Wisconsin v. Andre Tereal Evans (L.C. #2000CF188)

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

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).

Andre Tereal Evans appeals pro se from an order summarily denying his post-reconfinement motions to modify his sentence and to extend the time to file for postconviction relief. Upon reviewing the briefs and the record, we conclude at conference this case is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the order.

An administrative law judge (ALJ) ordered Evans' reconfinement. On June 3, 2015, the Division of Hearings and Appeals (DHA) issued a final decision upholding the ALJ's decision. The decision expressly informed Evans he had forty-five days to seek review through certiorari.

Rather than petitioning for a writ of certiorari, he filed in the circuit court that sentenced him in a previous criminal matter three motions for extensions of time to seek certiorari relief. The first, filed on October 19, 2015, was denied without a hearing, as Evans did not prove it was timely filed. *See* WIS. STAT. § 893.735(2). The circuit court did not respond to the other two. In December 2016, Evans filed the motions underlying this appeal: one to modify his sentence and another to extend the time to file for postconviction relief. The circuit court summarily denied the motions on grounds that Evans' filings indicated he was complaining about the DHA revocation decision, not an order of the court of criminal conviction, and he failed to timely file a petition for certiorari review with any circuit court. This appeal followed.²

Review of parole and probation revocation decisions is "by certiorari directed to the court of conviction." *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 183-84, 572 N.W.2d 505 (Ct. App. 1997) (citation omitted). Under WIS STAT. § 893.735(2):

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

² Evans filed this appeal on February 27, 2017. The notice of appeal indicates he is appealing from an order entered on January 19, 2017, "the Honorable Kathlene [sic] Kalashian presiding." Kalashian was the ALJ. There is nothing in the record dated January 19, 2017, but Evans appends to his notice of appeal a letter of that date from DHA denying his request to reopen his reincarceration hearing.

An 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. The 45-day period shall begin on the date of the decision or disposition, except that a court may extend the period by as many days as the prisoner proves have elapsed between the decision or disposition and the prisoner's actual notice of the decision or disposition.

Evans did not petition the circuit court for certiorari relief within forty-five days of the DHA decision. This court reviews circuit court decisions. We cannot address the substance of DHA's reconfinement decision without that decision first having been reviewed by the circuit court, and without a certified record of the agency's decision.

The only matter properly before us, therefore, is the circuit court's decision denying Evans' December 2016 motions to modify his sentence and to extend the time to file for postconviction relief. The court properly construed the motions as challenging DHA's June 3, 2015 reconfinement decision and properly declined to review that decision because Evans' request was untimely. Accordingly, we affirm.

Upon the foregoing reasons,

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

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

Diane M. Fremgen
Acting Clerk of Court of Appeals