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May 23, 2018

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

2017AP973

State of Wisconsin ex rel. Jason Simonis v. Dean Stensberg
(L.C. #2017CV219)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Jason Simonis appeals pro se from circuit court orders denying his petition for a writ of certiorari and motion for reconsideration. 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).¹ We affirm.

Simonis is a Wisconsin prisoner currently incarcerated at Oshkosh Correctional Institution. On September 6, 2016, the parole commission denied his request for parole. On March 15, 2017, Simonis sought review of that decision by filing a petition for a writ of certiorari in the Winnebago County circuit court. The court denied the petition because it was filed in the wrong venue. Simonis filed a motion for reconsideration, which the court also denied. This appeal follows.

On appeal, Simonis contends that the circuit court erred in denying his petition for a writ of certiorari. He asserts that his petition was filed in the correct venue. Alternatively, he maintains that the court should not have denied his petition due to a defect in venue.

We agree with the circuit court that Simonis filed his petition in the wrong venue. Under WIS. STAT. § 801.50(5), “venue of an action to review a refusal of parole is in the county where the petitioner was last convicted of an offense for which he or she is currently incarcerated.” *State ex rel. Hansen v. Circuit Court for Dane Cty.*, 181 Wis. 2d 993, 1001 n.7, 513 N.W.2d 139 (Ct. App. 1994). In Simonis’ case, that county was Outagamie, not Winnebago.

However, we also agree with Simonis that the circuit court should not have denied his petition due to a defect in venue. “[A] defect in venue is not jurisdictional and does not affect

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

the competence of the court.” *Id.* at 1002. Accordingly, the proper remedy for such a defect is to order a change of venue. *Id.*

Although the circuit court did not order a change of venue in this case, we are satisfied that its decision to deny Simonis’ petition was still appropriate.² That is because “[a]n 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.” WIS. STAT. § 893.735(2). Simonis’ petition, filed on March 15, 2017, was well beyond the time limit for review of the September 6, 2016 decision. Therefore, it was barred.³

Upon the foregoing reasons,

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

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

Sheila T. Reiff
Clerk of Court of Appeals

² This court may affirm on different grounds than those relied on by the circuit court. *Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995).

³ Simonis suggests that the forty-five-day time limit was extended by a letter he sent to the parole commission after its decision and/or his request for fee waiver in the circuit court. Simonis has not provided us with a copy of his letter or authority for why it would extend the time limit. As for his request for fee waiver, we note that it was filed on November 22, 2016, after the time limit had expired.