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**DISTRICT III**

August 30, 2018

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

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2016AP1507

James Robinson v. Brian Hayes (L. C. No. 2015CV618)

Before Stark, P.J., Hruz and Seidl, 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).**

James Robinson, pro se, appeals an order dismissing a petition for a writ of certiorari challenging a decision by the Department of Corrections to revoke Robinson's extended

supervision. 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>

On November 16, 2015, Robinson filed his petition for a writ of certiorari, and the circuit court issued a signed writ on November 19, 2015. On December 17, 2015, the Division of Hearings and Appeals sent a letter to Robinson, which explained that it had not received a signed copy of the writ. On February 22, 2016, more than ninety days after Robinson filed his petition and the court issued the writ, the court issued a show cause order, directing that the case would be dismissed within twenty days if good cause was not shown. Robinson sent a letter to the circuit court dated March 8, 2016, asserting that he had satisfied all the requirements for bringing the case. The court responded to Robinson in a letter dated March 15, 2016, enclosing an additional copy of the signed writ and giving Robinson thirty additional days to comply with the service requirements explained in the Division's letter. Robinson replied to the court in a letter dated March 22, 2016, stating he had satisfied all requirements to bring the case. On June 9, 2016, the court dismissed the certiorari petition for failure to prosecute.

There are three methods for obtaining a writ of certiorari:

First, the action “may be commenced under [WIS. STAT. § 801.02] sub. (1),” which permits use of a summons and a complaint. Second, the action “may be commenced ... by service of an appropriate original writ.” Third, the action “may be commenced

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

... by filing a complaint ... if service ... of the complaint and of an order is made upon the defendant.”<sup>[2]</sup>

*Nickel River Invs. v. City of La Crosse Bd. of Review*, 156 Wis. 2d 429, 431-32, 457 N.W.2d 333 (Ct. App. 1990) (quoting WIS. STAT. § 801.02(5)).

Robinson attempted to proceed through the writ method of certiorari review, but he did not properly serve the respondent. A prisoner’s certiorari action is commenced at the time of filing, but the prisoner must still serve his or her action. A prisoner certiorari action is a “civil action.” *Irby v. Young*, 139 Wis. 2d 279, 281, 407 N.W.2d 314 (Ct. App. 1987). The general statute applicable to commencement of actions contains a ninety-day service deadline. WIS. STAT. § 801.02(1). When proceeding by writ, § 801.02(5) provides for service “of an appropriate original writ on the defendant named in the writ,” but it contains no specific service deadline of its own. Rather, it references sub. (1). Thus, a reading of § 801.02(1) and (5) reveals that an original writ shall be served upon the defendant within ninety days.

A circuit court obtains personal jurisdiction over a defendant when the defendant is served in the manner prescribed by the statutes. See *Hagen v. City of Milwaukee Emp. Ret. Sys. & Pension Bd.*, 2003 WI 56, ¶12, 262 Wis. 2d 113, 663 N.W.2d 268. A court lacks personal jurisdiction over a defendant if there is a fundamental defect in the commencement of an action. *American Family Mut. Ins. Co. v. Royal Ins. Co. of Am.*, 167 Wis. 2d 524, 533, 481 N.W.2d 629 (1992). Failure to obtain personal jurisdiction over the defendant by statutorily proper

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<sup>2</sup> The Prison Litigation Reform Act (PLRA) requires that a prisoner’s action be commenced within forty-five days of the issuance of the final decision challenged. WIS. STAT. § 893.735(2). In prisoner certiorari actions, the action is commenced at the time that the prisoner files a petition seeking a writ of certiorari with the circuit court. Sec. 893.735(3).

service is a fundamental defect fatal to the action, regardless of prejudice. *Hagen*, 262 Wis. 2d 113, ¶13. Courts are prohibited from enlarging the ninety-day time period. *See* WIS. STAT. § 801.15(2).

Robinson, as the petitioner, had the burden to prove compliance with statutory service requirements—i.e., to establish that the respondent was properly served and was therefore subject to the circuit court’s jurisdiction. *Hagen*, 262 Wis. 2d 113, ¶12. “Even if the [respondent] actually knew of the pendency of the action, this is not equivalent to service.” *Id.*, ¶13.

Here, Robinson failed to demonstrate he had served the respondent with the original writ within ninety days, even after repeated reminders from both the circuit court and the respondent. This failure is fatal to his action.

Robinson nevertheless attempts to suggest that he sent the respondent a copy of the signed writ: “On or about 11-29-15, upon receipt of said paperwork from the court, he immediately forwarded them to the respondent and the respondent[’s] attorney of record.” However, Robinson’s insistence is belied by the record. Robinson filed his petition for a writ on November 16, 2015, and the circuit court signed the writ on November 19, 2015. On December 17, 2015, the respondent wrote Robinson a letter indicating that the agency had received a copy of the petition, but the documents Robinson forwarded “did not include a signed copy of a court order requiring that the underlying record be transmitted to the court for review.” The respondent explained that it could not complete the certified record return “until a signed order from the court orders us to do so.” In Robinson’s next communication with the court, dated March 8, 2016, he did not claim to have served the respondent with the original writ. The

case was properly dismissed for failing to properly serve the respondent with the original writ within ninety days.

Upon the foregoing,

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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*