



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 7, 2018

To:

Hon. Andrew T. Gonring
Circuit Court Judge
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Special Litigation & Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Theresa Russell
Clerk of Circuit Court
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Waupun Correctional Institution
Business Office
P.O. Box 351
Waupun, WI 53963-0351

S. Michael Murphy
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Vincent Martinez, #204321
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2017AP2328

State of Wisconsin ex rel. Vincent Martinez
v. Brian Hayes, Administrator (L.C. #2017CV627)

Before Reilly, P.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).

Vincent Martinez, pro se, appeals from an order denying his petition for writ of certiorari on the ground that his petition was untimely. Martinez argues his petition was timely and seeks a remand back to the circuit court to address his petition on the merits. Based upon our review of

the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21 (2015-16).¹ We affirm the order of the circuit court.

On October 22, 2013, Martinez's extended supervision was revoked. The Division of Hearings and Appeals (Division) affirmed his revocation on November 12, 2013. On September 1, 2017, Martinez requested a new revocation hearing, which the Division denied on September 8, 2017. On November 3, 2017, Martinez filed a petition for writ of certiorari with the circuit court, which was denied by the court as untimely in its decision and final order of November 30, 2017. Martinez filed a notice of appeal on November 27, 2017.

We affirm on multiple grounds. First, Martinez's appeal was filed before the entry of the court's November 30 decision, and, therefore, Martinez's notice of appeal was defective and his appeal must be dismissed. *See Ramsthal Advert. Agency v. Energy Miser, Inc.*, 90 Wis. 2d 74, 75-76, 279 N.W.2d 491 (Ct. App 1979) ("An appeal cannot be taken from an order before it is entered.").

Second, WIS. STAT. § 893.735(2) bars a certiorari action that is commenced more than forty-five days after the cause of action accrues. A certiorari action is commenced at the time a prisoner files a petition seeking a writ of certiorari with a court. *See* § 893.735(3). The decision of the Division was on September 8, 2017; the forty-five day deadline was October 23, 2017. As

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

Martinez did not file his petition until November 3, 2017, his petition is time barred by § 893.735(2).²

Upon the foregoing reasons,

IT IS ORDERED that the decision and 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.

Sheila T. Reiff
Clerk of Court of Appeals

² Martinez's argument that his deadline was tolled is without support in the record. A party seeking tolling has the burden of proof. *State ex rel. Johnson v. Litscher*, 2001 WI App 47, ¶10, 241 Wis. 2d 407, 625 N.W.2d 887.