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January 11, 2019

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

2017AP1463

State of Wisconsin v. Elliott Leon House (L.C. # 1992CF924745)

Before Kessler, P.J., Brennan and Brash, 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).

Elliott Leon House, *pro se*, appeals from an order of the circuit court that denied his request for access to his inmate release account for purchasing copies of his trial transcripts. He also appeals from an order denying his 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 The orders are summarily affirmed.

In 1993, House was convicted of four counts of first-degree intentional homicide and one count of attempted first-degree intentional homicide, all while using a dangerous weapon and all as a party to a crime. He is serving four consecutive life sentences plus an additional consecutive twenty-five years' imprisonment and will be eligible for parole on June 2, 2113. For whatever reason,² House no longer has access to the original copies of his transcripts, and obtaining new copies will apparently cost over \$950. He seeks copies of the transcripts "for the purpose of raising an ineffective assistance of appellate counsel claim and other violations he seek[s] to present in a Writ of Habeas Corpus." House also appears to believe there are viable claims of ineffective assistance of trial counsel and constitutional errors "that would allow [him] to be granted a new trial in the interest of justice."

House asked the circuit court to authorize access to his release account to pay the \$950. The circuit court acknowledged that under the Prisoner Litigation Reform Act (PLRA), *see* WIS. STAT. § 814.29(1m), and *State ex rel. Akbar v. Kronzer*, 2004 WI App 108, 273 Wis. 2d 749, 681 N.W.2d 280, the release account may be used to pay for the preparation of transcripts, but stated that "the law does not authorize the use of release account funds to pay for copies of transcripts that have already been prepared and provided to the defense." The circuit court

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

² In his motion to access the release account, House first stated that while he had been given a free copy of the transcripts by appointed counsel during his direct appeal, "these transcripts were mishandled and were reportedly burned up in a fire." In his reconsideration motion, he stated that he "never possessed physical copies of criminal transcripts" and that the transcripts had been provided to his now-ex-wife.

further noted that House is not a “prisoner” as defined in the PLRA, so he would not be entitled to access the release account under that statute and related cases. Thus, the circuit court denied the motion and the subsequent reconsideration motion. House appeals.

The PLRA took effect on September 1, 1998. *See Spence v. Cooke*, 222 Wis. 2d 530, 533, 587 N.W.2d 904 (Ct. App. 1998). The PLRA creates a scheme for determining how and from what funds an indigent prisoner will pay the costs and fees associated with litigation. *See id.* Until the PLRA, inmate release accounts could not be considered when making an indigency determination. *See id.* at 537. The accounts were also inaccessible to inmates under provisions of the administrative code stating that “[r]elease account funds may not be disbursed for any reason until the inmate is released to field supervision.” *See id.* at 532 (citation omitted).

In *Akbar*, this court determined that the cost of preparing a transcript constituted a fee under the PLRA and that the same process used when a prisoner seeks to avoid prepaying the filing fee could also be used when a prisoner “asks to have the cost for preparation of transcripts deducted from his or her trust fund accounts.” *See id.*, 273 Wis. 2d 749, ¶¶3-4. Invoking the PLRA and *Akbar* to seek access to his release account, House claims there is good cause to allow his access “for the purchase of the copies of trial transcripts needed to further appeal [his] criminal conviction[s].”

But House does not address the threshold question of whether he is a “prisoner.” For purposes of the PLRA, a “prisoner” includes “any person who is incarcerated, imprisoned or otherwise detained in a correctional institution,” but specifically excludes someone who brings “an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ ... seeking relief from a judgment of conviction or a sentence of

a court or an action under [WIS. STAT. §§] 809.30, 809.40, 973.19, 974.06 or 974.07.” *See* WIS. STAT. § 801.02(7)(a)2.c.

House has indicated that he wants to access his release account to pay for costs and fees associated with further challenges to his convictions. That is, he plans to “seek[] relief from a judgment of conviction or a sentence of a court, including [by] an action for an extraordinary writ[.]” *See State v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12 (habeas corpus is an extraordinary writ). He is, therefore, excluded from the definition of “prisoner” under the PLRA, so the act and cases like *Akbar* do not apply to him and he is not entitled to access his release account to pay for costs and fees associated with litigation.³

The fact that the PLRA does not apply to House is dispositive in this matter—“good cause” is not a consideration under the act—so we end our analysis here and do not discuss any other aspects of the circuit court’s ruling. *See State v. Manuel*, 2005 WI 75, ¶25 n.4, 281 Wis. 2d 554, 697 N.W.2d 811 (only dispositive issues need be addressed).

IT IS ORDERED that the orders appealed from are summarily affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals

³ We hold only that House may not access his release account to pay for the transcript copies; he is not foreclosed from obtaining them some other way.