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**DISTRICT II**

January 30, 2019

To:

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

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2017AP604-CR                      State of Wisconsin v. Steven Lee Hasselkus (L.C. #2003CF1040)

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).**

Steven Lee Hasselkus appeals from an order of the circuit court rejecting his challenge to the propriety of an extended supervision rule imposed by the Department of Corrections (DOC). 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> Because Hasselkus initiated his complaint in the wrong forum, we affirm.

Hasselkus has been in and out of prison since 1996 for drug crimes. Hasselkus was first released onto extended supervision in connection with the underlying case in 2006, but was quickly reincarcerated. He was eventually released back onto extended supervision, and, in 2016, the DOC revised his rules of supervision to disallow contact with K.W. Hasselkus filed a motion in the circuit court challenging the no contact rule. The circuit court denied the motion, determining that the no contact rule was related to Hasselkus's rehabilitation. Hasselkus appeals.

On appeal, the State argues that Hasselkus raised his challenge in the wrong forum. Because the DOC imposed the no contact rule pursuant to WIS. STAT. § 302.113(7), Hasselkus was required to pursue and exhaust his administrative remedies under WIS. ADMIN. CODE § DOC 328.12(1) (Nov. 2018). If Hasselkus remained aggrieved after exhausting his administrative remedies, the correct procedure would be to file a writ of certiorari in the circuit court. *See State ex rel. Macemon v. McReynolds*, 208 Wis. 2d 594, 596 n.1, 561 N.W.2d 779 (Ct. App. 1997). The State contends that the circuit court lacked competency to hear Hasselkus's challenge and urges this court to affirm on this alternate ground.

We are persuaded to affirm on the alternate ground that Hasselkus brought his challenge in the wrong forum. *See Mercado v. GE Money Bank*, 2009 WI App 73, ¶2, 318 Wis. 2d 216, 768 N.W.2d 53 (we are not constrained to the circuit court's reasoning and we may affirm its order on different grounds). While an offender may petition the circuit court to modify

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

conditions of supervision imposed by a court, WIS. STAT. § 302.113(7m)(a), there is no similar authority that allows an offender to seek relief in the circuit court in the first instance from conditions imposed by the DOC. Rather, WIS. ADMIN. CODE § DOC 328.12(1) “provide[s] offenders an opportunity for administrative review of certain decisions by allowing offenders to raise concerns regarding their supervision in an orderly manner.” Hasselkus provides no reason why his challenge to the DOC-imposed no contact rule should not be subject to § DOC 328.12.

We are not persuaded by Hasselkus’s theory that under *State v. Starks*, 2013 WI 69, ¶38, 349 Wis. 2d 274, 833 N.W.2d 146, the State forfeited its competency argument by failing to raise it in the circuit court. Unlike in *Starks*, the State’s respondent’s brief in the instant case fully discusses its procedural argument. *Id.* Hasselkus was able to file a reply brief addressing the State’s argument.

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.

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