



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 IV

July 23, 2019

To:

Hon. Valerie Bailey-Rihn
Circuit Court Judge
215 S. Hamilton St.
Madison, WI 53703

Ralph H. Jurjens III 310971
Columbia Correctional Inst.
P.O. Box 900
Portage, WI 53901-0900

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

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

Maura F.J. Whelan
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2018AP82

State of Wisconsin ex rel. Ralph H. Jurjens, III v. Michael
Dittmann and Jon E. Litscher (L.C. # 2017CV2509)

Before Lundsten, P.J., Blanchard and Fitzpatrick, 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).

Ralph Jurjens appeals an order dismissing his certiorari petition for review of a prison disciplinary decision. 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 (2017-18).¹ We affirm.

The circuit court dismissed Jurjens' petition on the grounds that it failed to state a claim upon which relief could be granted because he did not provide written documentation of all available administrative remedies, and because he failed to timely file all exhaustion documents. On appeal, one of the respondents' arguments is that, although Jurjens' petition itself was filed within the applicable time limit, the petition was properly dismissed as untimely because Jurjens' affidavit of indigency was not filed within that same period. *See* WIS. STAT. § 893.735(2) (prisoner certiorari deadline is 45 days). We agree with that argument.

Jurjens argues that his petition should be considered timely because he waited several weeks for necessary notary service in the prison. He argues that we should create a notary tolling rule similar to other tolling rules that have been created by this court and the supreme court. *See State ex rel. Steldt v. McCaughtry*, 2000 WI App 176, ¶¶17-18, 238 Wis. 2d 393, 617 N.W.2d 201 (statutes interpreted so that 45-day certiorari time limit is tolled while court decides fee waiver petition and while prisoner awaits disbursement of funds by prison); *State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶14, 239 Wis. 2d 327, 620 N.W.2d 409 (creating "mailbox rule" in which certiorari time is tolled from when inmate places petition in the prison mailbox); *State ex rel. Locklear v. Schwarz*, 2001 WI App 74, ¶26, 242 Wis. 2d 327, 629 N.W.2d 30 (equity requires tolling of certiorari statute of limitations while prisoner awaits certification from Department of Justice); *State ex rel. Nichols v. Litscher*, 2001 WI 119, ¶32,

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

247 Wis. 2d 1013, 635 N.W.2d 292 (mailbox rule adopted for petitions for review); *State ex rel. Walker v. McCaughtry*, 2001 WI App 110, ¶16, 244 Wis. 2d 177, 629 N.W.2d 17 (inequitable not to toll certiorari statute of limitations while prisoner waits for prison to provide required trust account statement); *State ex rel. Griffin v. Smith*, 2004 WI 36, ¶38, 270 Wis. 2d 235, 677 N.W.2d 259 (certiorari statute of limitations is equitably tolled when petitioner asks counsel to file petition and counsel promises, but fails, to do that).

The parties appear to agree that, for purposes of this issue, Jurjens' certiorari time limit began to run on June 27, 2017, and that it was tolled for nine days from July 11 to July 20 while he awaited a certification from the Department of Justice. Accordingly, Jurjens had a total time limit of fifty-four calendar days.

Jurjens asserts, and the respondents do not dispute, that he first requested notary service on July 20, 2017, and that he did not receive it until August 17, 2017. This means that Jurjens did not request notary service until 23 of his 54 calendar days had passed.

We conclude that it is not necessary to decide whether to adopt a notary tolling rule in this case. Even if such a tolling rule existed, we would not apply it here because Jurjens did not act until after the time that he should have acted if he was earnestly trying to be timely.

Jurjens also argues that the time limit should not be considered to have started running until September 11, 2017, well after the filing of his certiorari petition, because that was the date of the final decision on his inmate complaint about not receiving notary services. He relies on an unpublished decision that cannot properly be cited. *See* WIS. STAT. RULE 809.23(3). While it may be true that the pendency of an additional inmate complaint related to the decision at issue

may sometimes affect the certiorari filing date, here we regard the prison disciplinary decision and Jurjens' inmate complaint about not receiving notary services as two separate decisions.

Finally, Jurjens argues that dismissal was improper because denial of the fee waiver petition is the only circuit court action authorized in WIS. STAT. § 801.02(7)(c) when the petitioner fails to provide materials showing exhaustion of administrative remedies. Whatever the merits of that argument might be, in this decision we have affirmed the dismissal decision on the basis of untimeliness, not on failure to provide proof of exhaustion. Jurjens does not dispute that dismissal is a proper remedy for untimeliness.

Therefore,

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals