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DISTRICT IV

March 13, 2020

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

2018AP552

David Foley v. Jon Litscher (L.C. # 2017CV2035)

Before Blanchard, Kloppenburg, and Nashold, 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).

David Foley appeals an order dismissing his petition for an injunction. 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. We affirm.

Foley's petition alleged facts about the way that the prison at which he is incarcerated deducts funds from inmate accounts. For example, he alleged that the prison raised the portion

of his funds that it deducts to pay court-ordered obligations from 25% to 50%. The circuit court dismissed the petition for failure to exhaust administrative remedies.

On appeal, Foley argues that the circuit court erred by construing his petition as one for certiorari. His argument appears to assume that the requirement to exhaust administrative remedies applies only to certiorari petitions. However, that is not true.

A plaintiff who meets the definition of “prisoner” may not “commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions” in the prisoner’s facility unless the prisoner first exhausts “all available administrative remedies that the department of corrections has promulgated by rule.” WIS. STAT. § 801.02(7)(b) (2017-18).¹ The term “prison or jail conditions” is defined as “any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.” Sec. 801.02(7)(a)3.

This exhaustion requirement applies in this case, regardless of whether the petition is construed as one for certiorari. This is because Foley’s petition is a civil action with respect to the effects of actions by government officers, employees, or agents on the lives of prisoners.

Foley also argues that he exhausted his administrative remedies through the inmate complaint review system. One inmate complaint that Foley attached to his petition relates only to whether deductions were proper for a DNA surcharge on a specific judgment of conviction.

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

That complaint does not raise the broad issues that Foley's current court petition raises, and therefore it did not exhaust administrative remedies as to his current issues.

The other inmate complaint that Foley attached to his petition appears to relate to matters that may be within the scope of his current circuit court petition. However, the materials he attached for that inmate complaint do not go beyond denial at the inmate complaint examiner stage of the process. In his brief on appeal, Foley asserts that he appealed this complaint through the remaining steps. However, he does not provide a citation to the record to support that assertion. Therefore, we conclude that Foley did not exhaust his administrative remedies as to this complaint.

Foley also appears to argue that he attempted to complete the inmate complaint process for that complaint or others, but was unable to do so because materials he sent were not received by the offices to which he sent them. However, Foley again provides no citation to the record for these assertions. It does not appear that he made this argument in circuit court. Therefore, even if this is a proper legal basis to excuse Foley's failure to exhaust administrative remedies, we do not have a factual basis on which we could reach that conclusion.

For these reasons, we conclude that Foley's petition was properly dismissed for failure to exhaust administrative remedies.

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

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

Sheila T. Reiff
Clerk of Court of Appeals