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June 23, 2020

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

2018AP2151

State of Wisconsin ex rel. James Scott v. Kevin A. Carr
(L.C. # 2018CV4762)

Before Brash, P.J., Blanchard and Donald, 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).

James Scott, *pro se*, appeals an order quashing a writ of certiorari and dismissing Scott's petition for a writ of certiorari. Scott 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 (2017-18).¹ Therefore, we summarily affirm.

This appeal concerns a *pro se* petition for a writ of certiorari that Scott filed in the circuit court seeking review of a decision by the Department of Corrections (“DOC”). According to the petition, Scott was convicted of first-degree reckless homicide in 2001 and sentenced to twelve years of initial confinement and twelve years of extended supervision. He was released on extended supervision in January 2016. Later that year, the DOC sought to revoke Scott’s extended supervision based on allegations that he stole money from a gas station and possessed a firearm. Scott waived his right to a revocation hearing. Subsequently, Scott’s extended supervision was revoked and he was ordered reconfined for the maximum time remaining on his sentence: ten years, six months, and ten days.

In February 2018, Scott filed a *pro se* motion with the DOC seeking to reopen his revocation proceedings based on newly discovered evidence, citing *State ex rel. Booker v. Schwarz*, 2004 WI App 50, 270 Wis. 2d 745, 678 N.W.2d 361. The DOC denied the motion in April 2018.

In May 2018, Scott filed the petition for a writ of certiorari that is at issue in this appeal, seeking circuit court review of the DOC’s decision denying his motion to reopen the revocation proceedings. On June 11, 2018, the circuit court issued a writ of certiorari.² The writ directed the

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

² The Honorable Glenn H. Yamahiro issued the writ of certiorari. Two months later, the case was assigned to the Honorable Jeffrey A. Conen due to judicial rotation. Judge Conen entered the orders at issue in this appeal.

respondent, Jon E. Litscher, Secretary of the DOC,³ to “return to this court within sixty (60) days after service of this writ upon it all records and papers of the proceedings of said Department relating to the above claim so that this court may further act to review it.” (Bolding omitted.)

On September 26, 2018, the Secretary moved to quash the writ of certiorari “on the ground that Scott’s failure to personally serve [on the Secretary] a signed writ of certiorari deprives the [c]ourt of personal jurisdiction.” The Secretary further argued, “Because over 90 days have passed since issuance of the signed writ, this case must be dismissed.” *See* WIS. STAT. §§ 801.02(1) and (5) and 801.15(2)(a).

The circuit court issued an order quashing the writ and dismissing Scott’s petition for a writ of certiorari. The circuit court explained: “Because the petitioner did not serve the respondent with an authenticated copy of the writ signed by a judge, the court lacks personal jurisdiction over the respondent. Accordingly, the writ must be quashed and the petition dismissed.” Scott subsequently filed several responses, as well as a motion for reconsideration, which the circuit court denied. This appeal follows.

Although Scott’s petition for a writ of certiorari was dismissed based on Scott’s failure to serve the Secretary with an authenticated copy of the writ, Scott’s appellate brief does not address the circuit court’s decision. Instead, Scott argues the merits of the DOC’s decision to deny his

³ Jon E. Litscher was the Secretary of the Wisconsin Department of Corrections at the time this action was filed. While this appeal was pending, counsel for Litscher notified this court that Kevin A. Carr is now the Secretary. The caption of this case has been amended to reflect the change. *See* WIS. STAT. § 803.10(4)(a) (“When a public officer ... is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, ... the successor is automatically substituted as a party.”). In this decision, we will refer to the respondent as the Secretary.

motion to reopen the revocation proceedings, which is an issue not properly before this court at this time.

Based on Scott's failure to address the basis for the dismissal of his petition, the Secretary argues that "Scott has abandoned any argument that the circuit court erred when dismissing his petition." (Bolding omitted.) We agree. See *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (holding that "an issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned"); see also *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (holding that this court will not abandon its neutrality to develop arguments for a litigant).

In addition to arguing that Scott abandoned his challenge to the dismissal of his petition, the Secretary also explains why the circuit court's decision was correct, based on WIS. STAT. §§ 801.02(1) and (5) and related case law.

In his reply brief, Scott states that he "unambiguously concedes" that he failed to address the circuit court's reason for dismissing his petition. He explains that he lacked a copy of the circuit court's decision, having given it to a fellow inmate who was helping Scott with this appeal. Although Scott acknowledges that he now understands the circuit court's reasoning based on his review of the Secretary's appellate brief, he still does not identify any reasons why the circuit court's decision was erroneous. Further, he does not address the Secretary's arguments concerning the applicable statutes and case law, so those arguments are deemed admitted. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (holding that arguments not refuted may be deemed admitted).

In summary, Scott has failed to identify reasons why the circuit court's dismissal of his petition was improper. Therefore, we summarily affirm the order dismissing Scott's petition for a writ of certiorari and the order denying Scott's motion for reconsideration.

IT IS ORDERED that the orders are summarily affirmed. *See* 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