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DISTRICT IV

July 23, 2020

To:

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

2019AP1297

State of Wisconsin ex rel. Michael J. Yourchuck, Jr., v. Steven Landreman, Wisconsin Parole Commission (L.C. # 2019CV1683)

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

Michael Yourchuck, pro se, appeals a circuit court order dismissing his certiorari petition as untimely. 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 summarily affirm.

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

On April 26, 2019, the circuit court received Yourchuck's petition for certiorari review of a March 15, 2019 administrative decision that denied Yourchuck parole. Also on April 26, 2019, the circuit court received Yourchuck's petition to waive prepayment of the filing fee for the certiorari action. On May 4, 2019, Yourchuck signed the authorization to withhold funds from his trust fund account to pay the filing fee. On May 6, 2019, the prison business office processed Yourchuck's request for a certified copy of his six-month trust fund account statement and provided it to the court. On May 20, 2019, the circuit court granted Yourchuck's petition to commence this action without prepayment of the filing fee. On June 26, 2019, the circuit court denied Yourchuck's request for relief on the ground that the petition was untimely under WIS. STAT. § 893.735(2).

A petition for certiorari review of a prison disciplinary decision must be filed within 45 days of the final administrative decision. WIS. STAT. § 893.735(2). A certiorari action "is commenced at the time that the prisoner files a petition seeking a writ of certiorari with a court." WIS. STAT. § 893.735(3). A timely petition is required for the circuit court to have jurisdiction over the action, and thus an untimely petition must be dismissed. *See State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶5, 235 Wis. 2d 63, 611 N.W.2d 774.

Here, Yourchuck asserted in his petition that the final administrative decision denying him parole was issued on March 15, 2019. Accordingly, the deadline for Yourchuck to file his petition for certiorari review was April 29, 2019. However, while Yourchuck submitted his petition for certiorari review on April 26, 2019, he did not pay the filing fee when he submitted the petition. Instead, Yourchuck petitioned to waive prepayment of the filing fee.

A prisoner petitioning to waive prepayment of the filing fee for a certiorari action must submit the following: an affidavit of indigency; a certified copy of his or her trust fund account statement; and authorization for the prison to make payments toward the fees from his or her account each time the amount in the account exceeds \$10. *See* WIS. STAT. § 814.29(1m)(b) and (c). The question before us, then, is whether Yourchuck timely commenced his certiorari action by submitting both the petition and the documents necessary to obtain waiver of prepayment of the filing fee before the deadline for seeking certiorari review.

Yourchuck filed both the petition for certiorari review and the petition to waive prepayment of the filing fee by the April 29, 2019 deadline. However, he did not submit the authorization to withhold payments or the certified six-month trust fund account statement until after the deadline.

Yourchuck contends that the prison business office failed to timely forward the certified copy of his six-month trust fund account statement to the circuit court. He cites *State ex rel. Walker v. McCaughtry*, 2001 WI App 110, ¶16, 244 Wis. 2d 177, 629 N.W.2d 17, for the proposition that the time to file the petition is tolled after the prisoner requests the certified copy of the six-month trust fund account statement until the court receives it.

Steven Landreman, Chairperson of the Wisconsin Parole Commission, responds that it is immaterial whether the deadline was tolled after Yourchuck requested his certified six-month trust fund account statement because Yourchuck failed to timely submit the authorization for withholding. He points out that Yourchuck signed the authorization on May 4, 2019, after the deadline for submitting all documents within Yourchuck's control. *See id.*, ¶18 (“[T]olling

begins when the documents over which prisoners have control have been mailed, and all of the documents over which prisoners have no control have been requested.”).

We agree with Landreman. The *Walker* court characterized the authorization to withhold payments as a document within the prisoner’s control for purposes of the tolling rule. *Id.*, ¶20. The absence of any one of the required documents can lead to a rejection of the petition. *See id.*, ¶12. Because Yourchuck did not timely submit all of the documents over which he had control before the deadline for seeking certiorari review, the deadline was not tolled and the circuit court properly dismissed the petition as untimely.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals