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DISTRICT IV

January 21, 2021

Hon. Stacy A. Smith Circuit Court Judge Juneau County Justice Center 200 Oak St. Mauston, WI 53948

Lori Lowe Clerk of Circuit Court 200 Oak St. Mauston, WI 53948 Steven C. Kilpatrick Assistant Attorney General P.O. Box 7857 Madison, WI 53707-7857

Gregory A. Allen 167930 New Lisbon Correctional Inst. P.O. Box 4000 New Lisbon, WI 53950-4000

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

2020AP1309

Gregory A. Allen v. Ms. Selje, Records Custodian (L.C. # 2020CV15)

Before Fitzpatrick, P.J., Graham, 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).

Gregory Allen appeals a circuit court order that dismissed Allen's petition for a writ of mandamus relating to a public records law request. Based upon our review of the briefing and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).¹ We reverse and remand with directions that the circuit court deny the motion to quash and for further proceedings consistent with this opinion.

To:

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

Pursuant to the state public records law, Allen requested an audio copy of a phone conversation he had as an inmate at the New Lisbon Correctional Institution. The records custodian denied the request. Allen petitioned the circuit court for a writ of mandamus that would require the custodian to provide him with a copy of the requested record. The circuit court issued an alternative writ of mandamus that required the custodian to release the requested record or to show cause to the contrary.²

The records custodian moved to quash the writ. The custodian argued that disclosure of the prison call recording would be unlawful under the Wisconsin Electronic Surveillance Control Law or its federal equivalent. The circuit court granted the motion to quash and dismissed Allen's petition. *See* WIS. STAT. § 783.01 ("[T]he defendant may move to quash the writ and such motion shall be deemed a motion to dismiss the complaint under [WIS. STAT. §] 802.06(2).").

Allen argues that the electronic surveillance control law does not apply to his public records request, and that the records custodian has a duty to provide him with the requested record under the state public records law. The custodian has not filed a brief but instead has filed a one-paragraph position statement in which she states that she now "waives" the argument she made in support of her motion to quash. The custodian further states that she does not oppose any order by this court summarily reversing the circuit court's dismissal order and remanding for further proceedings.

² To be more precise, the alternative writ of mandamus required the records custodian to release all "non-confidential, unprivileged, and available information" contained in the requested record.

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The records custodian's position statement is, in effect, an abandonment of the sole basis for her motion to quash. Further, the custodian does not advance any alternative basis on which we might affirm the circuit court. Accordingly, we summarily reverse and remand for the circuit court to deny the custodian's motion to quash and for further proceedings in which the custodian will have the opportunity to file a return. *See Walter Laev, Inc. v. Karns*, 40 Wis. 2d 114, 117, 121-22, 161 N.W.2d 227 (1968) (explaining that, upon denial of a motion to quash an alternative writ of mandamus, the circuit court should have allowed the filing of a return); *see also State ex rel. Dalton v. Mundy*, 80 Wis. 2d 190, 194, 196-97, 257 N.W.2d 877 (1977) (affirming the circuit court's denial of a motion to quash an alternative writ of mandamus and acknowledging defenses that might still be raised by return).

Therefore,

IT IS ORDERED that the circuit court's order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1), and the cause remanded with directions that the circuit court deny the motion to quash and for further proceedings consistent with this opinion.

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

Sheila T. Reiff Clerk of Court of Appeals