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**DISTRICT IV**

March 4, 2021

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

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2018AP1780

State of Wisconsin ex rel. Joshua Howard v. Kevin A. Carr  
(L.C. # 2016CV3251)

Before Kloppenburg, 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).**

Joshua Howard, pro se, appeals a circuit court order denying his motion for contempt sanctions against the respondent, the Secretary of the Department of Corrections.<sup>1</sup> Based upon

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<sup>1</sup> The caption of this appeal has been changed to reflect the name of the current Secretary.

our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-2018).<sup>2</sup> We affirm.

The underlying subject matter of this appeal is Howard's challenge to a department policy under which the department increased collections from Howard's prison funds from 25% to 50%. Howard sought certiorari review of the Secretary's decision dismissing his inmate complaint that challenged the department's application of the policy. The circuit court found that Howard's judgment of conviction capped collections from Howard at 25%, and the court entered an order reversing the Secretary's decision. We refer to this order as "the certiorari order."

Subsequent to the certiorari order, Howard moved for contempt sanctions against the Secretary. Howard contended that the Secretary failed to refund prior collections over 25% and that, after a short period of compliance, the Secretary resumed collecting funds from Howard at a rate of 50%. As noted, the circuit court denied Howard's motion.

Howard contends that the circuit court should have found the Secretary in contempt based on the Secretary's violation of the certiorari order. The Secretary advances several arguments in support of the circuit court's decision to deny Howard's contempt motion. We conclude that the circuit court properly denied the motion because the certiorari order is not enforceable by a motion for contempt.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

This issue was decided by our supreme court in *State ex rel. Iushewitz v. Milwaukee County Personnel Review Board*, 176 Wis. 2d 706, 500 N.W.2d 634 (1993). In *Iushewitz*, the court addressed “the proper procedure to compel an administrative agency to comply with a mandate issued by a circuit court reviewing a case pursuant to a writ of certiorari.” *See id.* at 708. The court concluded that “an original action is necessary to compel an administrative agency ... to comply with a mandate issued by a circuit court reviewing a case pursuant to a writ of certiorari.” *Id.* at 710. The court further concluded, “A party seeking to enforce a mandate of a court may institute a separate action for a writ of mandamus.” *Id.* at 711.

Subsequently, in *Winkelman v. Town of Delafield*, 2000 WI App 254, 239 Wis. 2d 542, 620 N.W.2d 438, we similarly concluded that the violation of a certiorari order could not be enforced by contempt. *See id.*, ¶¶4-6. We further concluded that the enforcement of such an order would instead be by a petition for a writ of mandamus or other original action in the circuit court. *See id.*, ¶6.

Howard may be able to enforce the certiorari order by filing a petition for a writ of mandamus in the circuit court. We do not decide, however, whether such a petition would succeed. *See Iushewitz*, 176 Wis. 2d at 712 (declining to “decide whether Iushewitz would be entitled to a writ of mandamus if he were to petition for such a writ.”).

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*