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DISTRICT I

February 22, 2022

To:

Hon. Kevin E. Martens
Circuit Court Judge
Electronic Notice

Steven C. Kilpatrick
Assistant Attorney General
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Melvin Shelton
124 W. Hadley St.
Milwaukee, WI 53212

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

2021AP713

Melvin Shelton v. Department of Corrections
(L.C. # 2020CV5857)

Before Donald, P.J., Dugan and White, 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).

Melvin Shelton, *pro se*, appeals the circuit court's order dismissing his civil rights action brought pursuant to 42 U.S.C. § 1983. Shelton argues that his action should not have been dismissed for failure to state a claim. After review of the briefs and record, we conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Upon review, affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Shelton brought this action against the Department of Corrections pursuant to 42 U.S.C. § 1983 alleging that his civil rights were violated when the Department added the alias “Thomas Shelton” to his listing in the Sex Offender Registry. He also argued that the Department violated his constitutional right to bear arms because it issued a certificate discharging him from custody that stated that he was not allowed to possess a firearm.

Any claim for a violation of federal rights under 42 U.S.C. § 1983 must be brought against a “person” as defined in that statute. See *Lindas v. Cady*, 150 Wis. 2d 421, 423-24, 441 N.W.2d 705 (1989).² The United States Supreme Court has held that States or entities that are considered to be “arms of the State” for purposes of the Eleventh Amendment are not “persons” subject to suit within the meaning of § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 70-71 (1989). The Wisconsin Supreme Court has held that the Wisconsin Department of Corrections is an arm of the State. See *Mayhugh v. State*, 2015 WI 77, ¶32, 364 Wis. 2d 208, 867 N.W.2d 754. Therefore, the circuit court properly dismissed Shelton’s action for failure to state a claim because the Department is not a “person” subject to a 42 U.S.C. § 1983 claim.

Moreover, there is a second, independent reason that the circuit court properly dismissed Shelton’s action. A State agency is protected by sovereign immunity from claims, including federal claims under 42 U.S.C. § 1983, unless the Wisconsin legislature has waived that

² 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

immunity. *See PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶51, 317 Wis. 2d 656, 766 N.W.2d 559. Because the legislature has not expressly waived sovereign immunity to § 1983 claims brought by private individuals, Shelton's claim against the Department is barred by sovereign immunity.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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