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DISTRICT IV

April 7, 2022

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

2020AP1795	John Dahlk v. Brian Hayes (L.C. # 2020CV1553)
2020AP2104	John Dahlk v. Brian Hayes (L.C. # 2020CV1553)

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

In these consolidated cases, John Dahlk appeals orders dismissing his petition for a writ of certiorari as untimely, and denying his motion for reconsideration. Based upon our review of

the briefs and records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ For the reasons that follow, we affirm.

Dahlk was released to parole in connection with two circuit court cases. In March 2019, a revocation hearing was held before an administrative law judge (“ALJ”). By decision entered April 4, 2019, the ALJ revoked Dahlk’s parole in both cases and ordered his reconfinement. Dahlk appealed the ALJ’s decision to the Division of Hearings and Appeals and, on May 8, 2019, the administrator sustained the ALJ’s revocation decision. Dahlk’s attorney was sent a copy of the decision.

Dahlk filed a petition for a writ of certiorari on July 27, 2020. On July 31, 2020, the circuit court dismissed the writ petition as untimely because it was filed outside of the forty-five-day deadline set forth in WIS. STAT. § 893.735(2). Months later, Dahlk filed a reconsideration motion, which the circuit court denied by order dated November 5, 2020. Dahlk appeals the dismissal of his petition and the denial of his reconsideration motion.

We conclude that the circuit court properly dismissed Dahlk’s certiorari petition. WISCONSIN STAT. § 893.735(2) plainly states that “[a]n action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues.” In turn, “an action seeking a remedy available by certiorari is commenced at the time that the prisoner files a petition seeking a writ of certiorari with a court.” Sec. 893.735(3). Dahlk’s cause of action accrued no later than May 8, 2019, when the

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

administrator issued its decision, and Dahlk did not commence his action challenging the decision until July 27, 2020, when he filed his petition for a writ of certiorari.

Dahlk does not dispute that his cause of action accrued on May 8, 2019. Instead, he argues that he timely commenced his challenge to the administrator's decision because: the time was tolled due to his limited access to legal research materials; he attempted to file a petition for a writ of habeas corpus in January 2020; and he relied on purportedly erroneous advice given by the circuit court's Prisoner Litigation Unit ("PLU"). None of his reasons are persuasive.

Initially, Dahlk argues that "any statute of limitations should have been paused until [he] was given ample access to legal research materials." He asserts that he was held in jail "with no direct access to legal research materials until June 26, 2019," when he was transferred to Wisconsin's prison system, and that he had limited access to the prison law library until November 15, 2019, when he was "finally moved to a general population unit with access to legal research materials." While we have held that certain circumstances may toll the statutory limitation period in WIS. STAT. § 893.735(2), *see State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶14, 239 Wis. 2d 327, 620 N.W.2d 409, nothing in Dahlk's brief establishes the propriety of tolling in his case. He cites no authority, and we are aware of none, for the proposition that limited access to legal materials tolls the time for filing a petition for writ of certiorari.

Next, Dahlk argues that he timely commenced this action by attempting to file a petition for a writ of habeas corpus in January 2020. There are two parts to his argument. First, Dahlk asserts that he sought relief from the revocation decision by filing a habeas petition rather than a certiorari petition because "the limited scope of certiorari was inadequate to address [his]

allegations of constitutional violations,” and because he sought monetary damages. From this position, he asserts that he timely commenced his action because the forty-five-day limit in WIS. STAT. § 893.735 applies only to a certiorari petition, and not a habeas petition.

We reject Dahlk’s argument that habeas corpus was a proper vehicle to challenge his parole revocation because it is undeveloped and is unsupported by relevant legal authority or record citations. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Dahlk’s reliance on *State ex rel. Vanderbeke v. Endicott*, 210 Wis. 2d 502, 563 N.W.2d 883 (1997), is misplaced. The *Vanderbeke* court held that “habeas corpus was a proper method for Vanderbeke to use in challenging his probation revocation on the grounds of violation of due process because of incompetency and lack of counsel.” *Vanderbeke*, 210 Wis. 2d 502, ¶41. Dahlk raises neither ground in this case. Similarly, his description of the money damages he seeks are nonsensical, and he fails to legally or factually support his position that such a damages request either justifies a challenge to his revocation *via* habeas corpus, or permits a challenge outside of the forty-five-day statutory limit.

Further, we reject Dahlk’s argument that the PLU’s letter excuses his untimely certiorari petition. As argued in the respondent’s brief, none of Dahlk’s submissions establish that the PLU provided erroneous advice. Additionally, Dahlk’s complaints about the PLU’s letter do not explain why a petition filed in January 2020, which is still more than forty-five days after the administrator’s May 2019 decision, should serve as a timely petition for a writ of certiorari.

Finally, Dahlk fails to establish that the circuit court erroneously exercised its discretion in denying his motion for reconsideration. The court properly determined that Dahlk failed to establish either newly discovered evidence or “a manifest error of law or fact” in that motion.

Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd., 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are 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