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DISTRICT IV

April 13, 2023

To:

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Electronic Notice

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

2021AP2168

Patrick G. Lynch v. Kevin A. Carr (L.C. # 2021CV956)

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

Patrick Lynch appeals a circuit court order denying his petition for certiorari review. Lynch seeks review of a decision by the Secretary of the Wisconsin Department of Corrections that dismissed his challenge to the department's deduction of funds from his prison account to pay restitution. Based on 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) (2021-22).¹ We dismiss the appeal as moot.

Lynch initiated his challenge to the department’s deduction of funds by filing an internal inmate complaint. He asserted that the department was unlawfully deducting funds from his prison account at a rate of fifty percent to pay restitution on the judgment of conviction in Milwaukee County Circuit Court case No. 2011CF4579. Lynch argued that deduction at that rate was contrary to the judgment of conviction because the judgment limited the rate to twenty-five percent. The warden dismissed Lynch’s inmate complaint, and the Secretary upheld the dismissal.

“The scope of our review on certiorari is identical to that of the trial court.” *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385-86, 585 N.W.2d 640 (Ct. App. 1998). Our review is “limited to whether the agency’s decision was within its jurisdiction, the agency acted according to law, its decision was arbitrary or oppressive[,] and the evidence of record substantiates the decision.” *Id.* at 385.

On appeal, Lynch concedes that the issue of whether the department has been violating the Milwaukee County judgment of conviction is moot because the judgment has now been satisfied. Lynch states that “[t]his issue is moot at this time [due] to the fact that this obligation is satisfied since the original filing.” The Secretary agrees that this issue is moot and argues that Lynch’s

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

appeal should be dismissed because Lynch presents no other issues that are properly within the scope of this appeal. We agree with the Secretary.²

“[W]hen an appellant appeals an order to which he or she is no longer subjected,” the case is moot. *Winnebago Cnty. v. Christopher S.*, 2016 WI 1, ¶31, 366 Wis. 2d 1, 878 N.W.2d 109. This court is “entitled to find moot and dismiss appeals where its ruling is no longer needed or makes no difference as to the resolution of the controversy.” *Appel v. Halverson*, 50 Wis. 2d 230, 233, 184 N.W.2d 99 (1971); *see also Portage Cnty. v. J.W.K.*, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509 (“Appellate courts generally decline to reach moot issues, and if all issues on appeal are moot, the appeal should be dismissed.”).

Here, it is undisputed that Lynch is no longer subject to the deduction of funds from his prison account to pay restitution in the Milwaukee County case. Therefore, as Lynch concedes, the issue of whether the department is violating the Milwaukee County judgment of conviction on an ongoing basis is moot. And, Lynch does not develop any argument explaining why there might be any other issue properly before this court to decide in this appeal. Lynch requests that we order that any over-deduction of funds in the Milwaukee County case be applied to his financial obligations in a different criminal case, Waukesha County Circuit Court case No. 2012CF521. However, even if the department over-deducted funds in the Milwaukee County case, an order directing the department to redirect the funds is not within the scope of this appeal from Lynch’s certiorari action. *See Guerrero v. City of Kenosha Hous. Auth.*, 2011 WI App 138, ¶9, 337

² Because we agree with the Secretary that we should dismiss this appeal as moot, we do not address the Secretary’s alternative argument that the Milwaukee County judgment of conviction contains an ambiguity that allowed the department to deduct funds at a rate of fifty percent. *See Barrows v. American Family Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”).

Wis. 2d 484, 805 N.W.2d 127 (“[A] certiorari court cannot order the board to perform a certain act.”); *see also State v. Minniecheske*, 223 Wis. 2d 493, 502, 590 N.W.2d 17 (Ct. App. 1998) (discussing alternative procedures to obtain funds that the state has wrongfully seized). Accordingly, the possibility that the department over-deducted funds in the Milwaukee County case does not save this appeal from being moot.

Lynch also argues, as we understand it, that we should address similar issues relating to whether the department has been violating the judgment of conviction in the Waukesha County case, and whether it has been violating a third judgment of conviction in Ozaukee County Circuit Court case No. 2011CF240. The Secretary counters that any issue regarding any alleged violation of those separate judgments is not properly before this court. We agree. Lynch did not raise any challenge relating to the department’s alleged violation of those judgments in his inmate complaint. Therefore, Lynch did not exhaust his administrative remedies as to those issues, and he was not entitled to seek certiorari review of those issues. *See Moore v. Stahowiak*, 212 Wis. 2d 744, 750, 569 N.W.2d 711 (Ct. App. 1997) (“[A]n inmate is compelled to first exhaust all administrative remedies available to him or her before filing an action in civil court[.]”); WIS. ADMIN. CODE § DOC 310.05 (through Mar. 2023) (“Before an inmate may commence a civil action or special proceedings, the inmate shall exhaust all administrative remedies the department has promulgated by rule.”).³

Therefore,

³ The Secretary concedes that his separate decision addressing the Waukesha County case, No. 2012CF521, cannot survive this court’s opinion in *State ex rel. Ortiz v. Carr*, 2022 WI App 16, 401 Wis. 2d 450, 973 N.W.2d 786.

IT IS ORDERED that this appeal is dismissed.

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

Sheila T. Reiff
Clerk of Court of Appeals