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DISTRICT II

April 19, 2023

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Electronic Notice

Brian Keenan
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Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Kenyatta Cursey, #432361
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P.O. Box 938
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1477

Kenyatta Cursey v. Dan Cromwell (L.C. #2022CV851)

Before Neubauer, Grogan and Lazar, 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).

Kenyatta Cursey appeals from an order denying his request for a writ of mandamus against Dan Cromwell in his capacity as the warden of Redgranite Correctional Institution (RGCI), where Cursey was incarcerated. Cursey alleges that Cromwell had a clear duty to release him because it was error for the Wisconsin Department of Corrections to revoke his consecutive terms of extended supervision for a violation that occurred while he was serving the first of these terms. Based upon our review of the briefs and Record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ Cursey has shown neither a plain violation of a legal duty nor the lack of an adequate remedy at law, both of which are required for a writ of mandamus to be properly issued. *See State ex rel. Zignego v. Wisconsin Elections Comm’n*, 2021 WI 32, ¶38, 396 Wis. 2d 391, 957 N.W.2d 208. Therefore, we affirm.

Cursey asserts that he received consecutive sentences in two different cases, each consisting of a term of initial confinement and a term of extended supervision. He violated the conditions of extended supervision while serving the supervision term mandated by his first case, which led to revocation of extended supervision for both cases and incarceration at RGCI. Cursey filed a petition for a writ of mandamus, alleging that Cromwell, as Warden, “is legally responsible for all the people within R.G.C.I[.] and every department” and that “the violation[] can only be applied to [the first case], not both[.]” Therefore, according to Cursey, Cromwell had a plain duty to release him after he had served the revoked sentence associated with his first case. The circuit court denied Cursey’s petition, determining that his theory had been rejected by this court in *State v. Collins*, 2008 WI App 163, 314 Wis. 2d 653, 760 N.W.2d 438. Cursey appeals.

“Mandamus is an extraordinary legal remedy, available only to parties that can show that the writ is based on a clear, specific legal right which is free from substantial doubt.” *Zignego*, 396 Wis. 2d 391, ¶38 (citation omitted). “A party seeking mandamus must also show that the duty sought to be enforced is positive and plain; that substantial damage will result if the duty is

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

not performed; and that no other adequate remedy at law exists.” *Id.* (citation omitted). We are to uphold a circuit court’s denial of a writ of mandamus ““unless the circuit court erroneously exercised its discretion.”” *State ex rel. Coogan v. Michek*, 2020 WI App 37, ¶14, 392 Wis. 2d 885, 945 N.W.2d 752 (citation omitted). We conclude that, in this case, denial was proper because Cursey has shown neither a legal right to release nor that he lacks an adequate remedy at law.

As noted by the circuit court, this court addressed Cursey’s theory with respect to revocation of consecutive sentences in *Collins*, holding that “consecutive periods of extended supervision consist[] of one continuous period, and thus revocation for the entire period [is] proper” when a violation occurs during the period of supervision mandated by the first of multiple sentences. *Collins*, 314 Wis. 2d 653, ¶1. This holding is based on WIS. STAT. § 973.15(2m)(b)2., which requires that “the person sentenced shall serve the periods of confinement in prison under the sentences consecutively and the terms of extended supervision under the sentences consecutively and in the order in which the sentences have been pronounced[,]” and on WIS. STAT. § 302.113(4), which provides that “[a]ll consecutive sentences ... shall be computed as one continuous sentence” and that one “shall serve any term of extended supervision after serving all terms of confinement in prison.” *See Collins*, 314 Wis. 2d 653, ¶¶7-9. Cursey is mistaken in asserting that § 973.15(2m)(e) applies to his case, rather than the aforementioned sections. Section 973.15(2m)(e) relates to concurrent (not consecutive) sentences. The applicable statutes are clear in directing consecutive sentences to be computed as one continuous sentence, with extended supervision coming after all aggregated terms of confinement in prison have been served and with a revocation of extended supervision applying to all of the aggregated periods of extended supervision. *Collins*, 314 Wis. 2d 653, ¶9. Thus,

Cursey has not shown that revocation of his entire period of extended supervision is improper or that he has a legal right to release.

In addition, as the State correctly points out, any decision revoking extended supervision is reviewable in the circuit court under certiorari review. *See, e.g., State ex rel. McElvaney v. Schwarz*, 2008 WI App 102, ¶4, 313 Wis. 2d 125, 756 N.W.2d 441; *State ex rel. Thomas v. Schwarz*, 2007 WI 57, ¶¶11-12, 300 Wis. 2d 381, 732 N.W.2d 1. Thus, Cursey had an adequate remedy at law for any alleged error in the revocation of his sentence, and he has not met the requirement of having no such remedy necessary to obtain a writ of mandamus. *See Zignego*, 396 Wis. 2d 391, ¶38.

Therefore,

IT IS ORDERED that the order of the circuit court is 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