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DISTRICT IV

May 18, 2023

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Dane County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1160

State ex rel. William McKinney v. Warden Cromwell
(L.C. # 2022CV1056)

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

William McKinney, pro se, appeals orders dismissing his petition for a writ of certiorari and denying his motion for reconsideration. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2021-22).¹

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

On April 25, 2022, McKinney filed a petition for writ of certiorari, seeking review of a November 17, 2021 decision of the prison Program Review Committee, which denied McKinney's request for early release due to extraordinary health conditions pursuant to WIS. STAT. § 302.113(9g). The circuit court denied McKinney's petition for writ of certiorari on grounds that it was untimely under WIS. STAT. § 893.735(2). McKinney filed a motion for reconsideration, which the circuit court also denied. McKinney then filed this appeal, challenging the dismissal of his petition and the denial of his reconsideration motion.

We conclude that the circuit court properly dismissed McKinney's certiorari petition. WISCONSIN STAT. § 893.735(2) provides 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). McKinney's cause of action accrued on November 17, 2021, when the Committee issued its final decision. McKinney did not commence his certiorari action challenging the Committee's decision until April 25, 2022, which was well past the 45-day deadline provided in § 893.735(3).

McKinney argues that he was required to exhaust his administrative remedies prior to seeking certiorari review and that, therefore, the 45-day deadline should have been tolled while he sought relief through the inmate complaint review system (ICRS) and while he pursued an appeal to the director of the Bureau of Classification and Movement. The respondents counter that McKinney was not required to exhaust administrative remedies because the decision of the Committee was final and not subject to administrative review. Therefore, they argue, McKinney

was not entitled to equitable tolling of the 45-day deadline. For the reasons discussed below, we agree with the respondents.

The Committee’s November 17, 2021 decision denying McKinney’s request for early release due to extraordinary health conditions was a classification decision made pursuant to WIS. ADMIN. CODE § DOC 302.41 (October 2018).² Under WIS. ADMIN. CODE § DOC 310.06(3) and (3c) (March 2018),³ “[a]n inmate may not use the IRCS to challenge ... [a] classification decision.” Not only was McKinney not required to seek administrative review of the Committee’s decision through the ICRS, he was prohibited under DOC 310.06(3c) from doing so. We conclude, as did the circuit court, that the 45-day deadline for commencing a certiorari action was not tolled while McKinney pursued an inmate complaint.

We turn next to McKinney’s argument that he was required to appeal the Committee’s decision to the director of the Bureau of Classification and Movement pursuant to WIS. ADMIN. CODE § DOC 302.19. We reject this argument because there was no such requirement. DOC 302.19(1) provides:

Within 10 calendar days of an inmate’s receipt of a written decision concerning custody, institution placement, or program need, the inmate may request a review of the decision made under s. DOC 302.16(7), 302.17(10), or 302.18 if the inmate believes that the decision was based on erroneous information.

² All references to the Wisconsin Administrative Code Chapter DOC 302 are to the October 2018 register unless otherwise noted.

³ All references to the Wisconsin Administrative Code Chapter DOC 310 are to the March 2018 register unless otherwise noted.

The Committee’s decision was not made under any of the code sections enumerated in DOC 302.19(1). Rather, as discussed above, it was another type of classification decision made pursuant to WIS. ADMIN. CODE § DOC 302.41. The Committee’s decision was not subject to administrative review under DOC 302.19(1) but, rather, a final decision. McKinney’s cause of action therefore accrued on the date of that final decision, November 17, 2021. Because McKinney did not file his petition for writ of certiorari within 45 days, the circuit court properly dismissed the petition as untimely.

Finally, McKinney fails to establish that the circuit court erroneously exercised its discretion in denying his motion for reconsideration. The court properly determined that McKinney failed to present any newly discovered evidence or establish “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