



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 21, 2013

To:

Hon. Richard G. Niess
Circuit Court Judge
215 South Hamilton, Br 9, Rm 5103
Madison, WI 53703

Steven C. Kilpatrick
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Jesse Hardy Swinson 372937
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2011AP2856

State of Wisconsin ex rel. Jesse Hardy Swinson v. T. Snider, L. Nicolai, Jeffrey Pugh, and Mark Heise (L.C. # 2011CV1610)

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

Jesse Hardy Swinson appeals an order of the circuit court denying his petition for writ of certiorari, which challenged the respondents' denial of his request to change his prison custody classification. 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 (2011-12).¹ We summarily affirm.

Swinson is a prisoner at Stanley Correctional Institution ("SCI"). He was denied parole on March 11, 2010. Later that year, the Program Review Committee ("PRC") made a

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

determination to maintain Swinson's custody classification as "medium," rather than to reduce it to "minimum" as Swinson had requested. Swinson appealed the PRC decision to the Bureau of Offender Classification and Movement ("BOCM"), which upheld the PRC's decision. The BOCM decision was signed by section chief Angela Hansen as a designee of Mark Heise, director of BOCM. Swinson then filed a petition for writ of certiorari in circuit court, naming Heise as a respondent, as well as SCI social worker Tina Snider, PRC committee member Lynn Nicolai, and SCI warden Jeffrey Pugh. The circuit court denied certiorari relief, and Swinson now appeals.

Swinson's brief contains numerous complaints about the circuit court proceedings and the administrative proceedings in this matter. As a threshold matter, we note that many of the arguments in the appellant's brief are incoherent, undeveloped, or unsupported by relevant factual and legal citations, as required by the Rules of Appellate Procedure. *See* WIS. STAT. RULE 809.19(1)(d) and (e) (setting forth the requirements for an appellant's brief). The depth of our discussion below is therefore proportional to the appellant's development—or lack of development—of each issue. Any arguments in the appellant's briefs that we do not address are either so patently meritless or so inadequately developed that they do not warrant our attention. *See Libertarian Party of Wisconsin v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack "sufficient merit to warrant individual attention"); *Dieck v. Unified Sch. Dist. of Antigo*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (we need not address arguments unsupported by record citations).

As an additional threshold matter, we note that Swinson's argument that Snider, Nicolai, and Pugh are proper respondents is without merit. Under WIS. ADMIN. CODE § DOC 302.18, custody classification decisions of the PRC are appealed to the director of BOCM or his

designee, who then issues a final classification determination. Certiorari review is available only of final determinations. *State ex rel. Myers v. Smith*, 2009 WI App 49, ¶10, 316 Wis. 2d 722, 766 N.W.2d 764. Heise, as director of BOCM, is the only one of the four named respondents who is a final decision maker and, therefore, is the only named respondent who is a proper party.

Having established that Heise is a proper respondent, we now turn to Swinson's argument that the return to the writ of certiorari was incomplete because it did not contain evidence that would have shown that a reduction in his security status was appropriate. Swinson filed several motions in circuit court seeking to supplement the return to the writ with additional documents he believes should have been included. The circuit court denied the motions. On appeal, Swinson fails to establish that Heise considered or even had access to the supplemental materials when making his decision. Certiorari review is limited to matters within the record of the original administrative hearing. *State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 120, 289 N.W.2d 357 (Ct. App. 1980). We therefore reject Swinson's claim that the return was incomplete.

We reject Swinson's argument that Heise improperly denied Swinson's request to reduce his custody classification to "minimum." Swinson carries the burden of establishing by a preponderance of the evidence that Heise's actions on behalf of BOCM were arbitrary and capricious. *Richards v. Graham*, 2011 WI App 100, ¶6, 336 Wis. 2d 175, 801 N.W.2d 821. WISCONSIN ADMIN. CODE § DOC 302.07 sets forth factors that the administrative agency may consider when determining an inmate's custody classification. Our review of the certiorari record indicates that PRC considered several of those factors, including but not limited to the seriousness of the crimes for which Swinson was convicted, his adjustment and misconduct record, the length of his sentence, and recent parole commission actions. Given that the return

supports the PRC's determination, we conclude that Swinson has not met his burden of showing that Heise's actions in upholding the classification determination were arbitrary and capricious.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals