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**DISTRICT IV**

June 4, 2013

*To:*

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

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2012AP779

State of Wisconsin ex rel. Glenn Turner v. Timothy Hines  
(L.C. # 2011CV4378)

Before Higginbotham, Sherman and Kloppenburg, JJ

Tayr Kilaab al Ghashiyan (Khan) appeals orders denying his motions for reconsideration of the circuit court's prior order dismissing Khan's writ petition.<sup>1</sup> We dismiss the appeal for lack of jurisdiction.

Ghashiyan filed a writ petition in the circuit court in September 2011. The petition argued that the Department of Corrections (DOC) deprived the petitioners of due process in its disciplinary proceedings, unlawfully extending their mandatory release dates. The petition sought to expunge all of the petitioners' disciplinary records from 1973 to 2011 and to restore their good time credit. The circuit court dismissed the petition for failure to state a claim. Ghashiyan appealed, and we dismissed the appeal without prejudice because Ghashiyan failed to comply with the procedure for seeking waiver of prepayment of the filing fee. *See* WIS. STAT. § 814.29(1m)(g) (2011-12).<sup>2</sup> Ghashiyan moved for reconsideration, and we issued an order stating that we would reinstate the appeal if Ghashiyan submitted the required documents before remittitur.<sup>3</sup> Ghashiyan failed to do so, and we closed the file for the appeal in February 2012.

In March 2012, Ghashiyan moved for reconsideration in the circuit court. The circuit court denied the motion as untimely and determined the motion presented no new arguments.

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<sup>1</sup> The writ petition names the petitioners as Ghashiyan, Glenn Turner, Battites Wesley, Willie Dobson, David Wilke, "and all other incarcerated persons similarly situated." Only Ghashiyan appeals.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>3</sup> Ghashiyan asserts he never received our order denying his motion for reconsideration. We note that our records indicate that the order was returned to us as undeliverable. Nonetheless, it remains that Ghashiyan's appeal from the circuit court's order dismissing the petition was dismissed for failure to properly seek waiver of prepayment of the filing fee, and that Ghashiyan did not provide a basis for this court to reinstate the appeal.

The circuit court denied Ghashiyani's amended motion for reconsideration for the same reasons. Ghashiyani now appeals the circuit court's orders denying his motions for reconsideration.

“[A]n order entered on a motion to modify or vacate a judgment or order is not appealable where ... the only issues raised by the motion were disposed of by the original judgment or order.” *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25, 197 N.W.2d 752 (1972). A motion for reconsideration “must present issues other than those determined by the order or judgment for which review is requested in order to appeal from the order entered on the motion for reconsideration.” *Id.* at 26. We therefore compare the issues raised in the reconsideration motion with the issues disposed of in the order denying the petition. *See Harris v. Reivitz*, 142 Wis. 2d 82, 87, 417 N.W.2d 50 (Ct. App. 1987).

The circuit court denied the writ petition because it determined that the petition failed to state a claim. *See* WIS. STAT. § 802.05(4)(b)4. The court explained that it was unclear what type of action the petitioners were seeking to file, noting that the writ was labeled as a “writ of habeas corpus,” the petition was labeled as a “petition for prerogative writs and remedies,” and the case classification code the petitioners included on the petition was for an administrative agency review. Because the petition challenged the validity of the petitioners' conduct reports, and a challenge to a prison disciplinary decision is by certiorari, the court construed the filing as a petition for a writ of certiorari. *See State ex rel. L'Minggio v. Gamble*, 2003 WI 82, ¶2, 263 Wis. 2d 55, 667 N.W.2d 1. The court then explained that, to obtain certiorari review, each petitioner would have had to file an individual certiorari petition challenging specific conduct reports within forty-five days of the disciplinary decisions. *See* WIS. STAT. § 893.735(2).

Ghashiyani argued in his motions for reconsideration that: (1) the circuit court committed misconduct in public office and denied the petitioners equal protection by denying the petitioners the right to join their causes of action in one petition; (2) the petition stated a claim by alleging the DOC disciplinary procedures violated the prisoners' due process rights; and (3) the circuit court erred by construing the petitioners' habeas corpus filing as seeking certiorari review, citing *State v. Johnson*, 101 Wis. 2d 698, 703, 305 N.W.2d 188 (Ct. App. 1981) (the correct procedure to test the legality of a detention pursuant to the DOC's computation of good time credit is by habeas corpus).

We conclude that the motions for reconsideration raised only those issues disposed of by the circuit court's original order dismissing the petition. The motions challenged the court's decision that the joint petition to expunge the petitioners' disciplinary records and restore their good time credit, based on a claim that the disciplinary proceedings violated due process, did not state a claim. Because Ghashiyani's motions for reconsideration raised the same issue decided in the court's order dismissing the petition—namely, whether the petition stated a claim—we lack jurisdiction over this appeal.<sup>4</sup>

Therefore,

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<sup>4</sup> In the alternative, we would reject Ghashiyani's appeal on the merits. Habeas corpus is an appropriate mechanism for challenging the method by which good time credit is calculated. *See State v. Johnson*, 101 Wis. 2d 698, 703, 305 N.W.2d 188 (Ct. App. 1981). However, in this case, the petitioners are challenging the validity of their conduct reports, rather than seeking review and modification of the computation of good time credit. The proper avenue of relief was therefore by certiorari review, and Ghashiyani does not develop an argument that certiorari review was properly pursued. *See State ex rel. Staples v. DHSS*, 128 Wis. 2d 531, 534, 384 N.W.2d 363 (Ct. App. 1986).

IT IS ORDERED that this appeal is dismissed for lack of jurisdiction.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*