

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 29, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP2591**

**Cir. Ct. No. 2013CV1925**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. WALTER J. KURANDA, JR.,**

**PETITIONER-APPELLANT,**

**V.**

**GARY H. HAMBLIN, LARRY JENKINS AND MICHAEL DITTMAN,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
FRANK D. REMINGTON, Judge. *Reversed and cause remanded with directions.*

Before Lundsten, Higginbotham and Kloppenburg, JJ.

¶1 PER CURIAM. Walter Kuranda, Jr., pro se, appeals a circuit court order that dismissed Kuranda's petition for certiorari review of a prison disciplinary decision. Kuranda argues that the circuit court erred in its determination that Kuranda's petition was untimely and that the Department of

Corrections (DOC) erred in imposing restitution. We agree that Kuranda's petition was timely and that the restitution order does not withstand certiorari review. We reverse the circuit court's order and DOC's restitution award, and direct the circuit court to remand to the hearing officer for further proceedings.

¶2 Kuranda received a prison conduct report in February 2011. Following a disciplinary hearing, Kuranda was found guilty of fighting. The hearing officer imposed 360 days of disciplinary separation and "restitution for medical expenses starting at \$580.00." Kuranda challenged the disciplinary disposition, and the warden affirmed by a decision dated March 16, 2011.

¶3 On May 14, 2012, Kuranda filed a complaint with the Inmate Complaint Review System (ICRS). Kuranda asserted that his restitution had been increased by \$1,968.17 without notice and argued that his due process rights had been violated. On July 6, 2012, the ICRS issued the final administrative decision dismissing Kuranda's challenge to the restitution amount. It stated that the prison modified the restitution when the final medical bills were received, and acknowledged that Kuranda only learned of the amount when he received his updated trust account statement. The decision indicated that the better practice would have been to notify Kuranda when the restitution was modified, but dismissed Kuranda's complaint because the disciplinary decision had indicated that the original \$580 restitution award was only a starting point.

¶4 On August 3, 2012, Kuranda placed a petition for a writ of certiorari, a prisoner's petition for waiver of prepayment of fees, and supporting documents in the prison mailbox system. On September 10, 2012, the circuit court denied Kuranda's petition for waiver of prepayment of fees because the court found that Kuranda was not indigent.. Kuranda moved for reconsideration, asserting that the

only funds he had were in his prison release account, that Kuranda was willing to use those funds to pay the filing fee, but that a court order was required to access that account. The court denied reconsideration on November 9, 2012, stating that Kuranda was required to move the court for access to his release account funds under *State ex rel. Coleman v. Sullivan*, 229 Wis. 2d 804, 809-10, 601 N.W.2d 335 (Ct. App. 1999), and that Kuranda had not done so. On November 19, 2012, Kuranda filed another motion for reconsideration. Kuranda pointed out that, when he filed his petition for waiver of prepayment, he had submitted an authorization to withhold money from his trust account. Kuranda also formally moved the court to authorize payment of the filing fee from his release account. On December 14, 2012, the circuit court authorized access to Kuranda's release account to pay the filing fee for this action. The circuit court then denied Kuranda's request for relief on grounds the petition was untimely because it was not "filed" until Kuranda moved for access to his release account funds on November 19, 2012.

¶5 On appeal, Kuranda argues that the circuit court erred in its determination that Kuranda's petition was untimely. He argues that his petition was timely filed when he placed all required documents for the petition and waiver of prepayment in the prison mailbox system on August 3, 2012. We agree.

¶6 A petition for certiorari review of a prison disciplinary decision must be filed within forty-five days of the final decision that exhausts the prisoner's administrative remedies. WIS. STAT. §§ 893.735; 801.02(7)(b) (2011-12).<sup>1</sup> "[W]hen a prison inmate places a certiorari petition in the institution's mailbox for

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

forwarding to the circuit court, the forty-five-day time limit ... is tolled.” *State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶14, 239 Wis. 2d 327, 620 N.W.2d 409.

¶7 Additionally, the forty-five-day deadline is tolled if, along with the petition, a prisoner requests waiver of prepayment of the filing fee on grounds of indigency by submitting documents required under WIS. STAT. § 814.29(1m). *See State ex rel. Steldt v. McCaughtry*, 2000 WI App 176, ¶17, 238 Wis. 2d 393, 617 N.W.2d 201. If the prisoner has funds in his or her release account, “the court shall order an initial partial filing fee to be paid from that trust fund account before allowing the prisoner to commence ... [the] action .... The initial filing fee shall be the current balance of the prisoner’s trust fund account or the required filing fee, whichever is less.” WIS. STAT. § 814.29(1m)(d). Thus, “[i]f the prisoner has assets in his or her trust account, the court *must* order the prisoner to pay as much of the filing fee as is available in the account before commencing the action.” *Steldt*, 238 Wis. 2d 393, ¶8 (emphasis added). The time to file the action does not begin to run until the prisoner receives the order allowing access to his or her release account. *Id.*, ¶18.

¶8 Here, the final decision exhausting Kuranda’s administrative remedies was filed July 6, 2012. Kuranda placed his petition for a writ of certiorari and petition for fee waiver in the prison mailbox system on August 3, 2012. Thus, the time to file was tolled as of August 3, 2012, within the time required by statute.

¶9 On September 10, 2012, the circuit court determined that Kuranda had submitted all the required documents to obtain fee waiver, including the authorization to withhold funds from his trust account. The court denied fee

waiver on grounds that Kuranda was not indigent, apparently because Kuranda had sufficient funds to pay the filing fee in his release account. However, the circuit court did not order the filing fee to be paid from Kuranda's release account as required by WIS. STAT. § 814.29(1m)(d). Instead, the circuit court denied waiver outright and directed Kuranda to make a formal request for access to his release account.

¶10 We conclude that Kuranda timely commenced this action as of August 3, 2012. When Kuranda placed the petition and all necessary documents for fee waiver in the prison mailbox system, he included the required authorization to withhold funds from his release account. Nothing more was necessary for the circuit court to issue the order for access to Kuranda's release account as required under WIS. STAT. § 814.29(1m)(d). Thus, the petition was timely filed on that date. *See Steldt*, 238 Wis. 2d 393, ¶18 (“[T]he certiorari action should be considered filed on the date the prisoner requests a disbursement of the ordered amount from his or her prison accounts....”).

¶11 The circuit court's reliance on *Coleman* for the proposition that a prisoner must file a separate motion for authorization to use his release account is misplaced. *Coleman* held that a court order is required for a prisoner to access his release account to pay a filing fee. The *Coleman* court noted that “[a] prisoner must authorize the agency having custody of his or her trust fund accounts to forward payments to the clerk of court for the filing fee” under WIS. STAT. § 814.29(1m)(c)2. *Coleman*, 229 Wis. 2d at 809 & n.6. Nothing in *Coleman* suggests that a prisoner must do more than file the required documents under WIS. STAT. § 814.29(1m) to obtain a court order for access to his release account. When, as here, a prisoner submits all required documents for waiver of prepayment of the filing fee, including authorization to withhold funds from his

release account, the prisoner's request for disbursement of funds from his release account is complete.<sup>2</sup> See WIS. STAT. § 814.29(1m)(d).

¶12 Having determined that Kuranda's petition for certiorari review was timely filed, we turn to the merits of Kuranda's certiorari petition. See *State ex rel. Anderson-El v. Cooke*, 2000 WI 40, ¶15, 234 Wis. 2d 626, 610 N.W.2d 821 (on certiorari review of a prison disciplinary decision, we review the decision of the DOC, not the circuit court). We examine only whether the DOC's decision was within its jurisdiction, according to law, arbitrary or unreasonable, and supported by substantial evidence. *Id.*

¶13 Kuranda argues on appeal that the hearing examiner erred in imposing restitution. He asserts that the record does not contain any evidence supporting the original restitution award or the increased amount. Kuranda also asserts that he was denied due process when the DOC set the amount of restitution without providing Kuranda notice and an opportunity to be heard. We agree.<sup>3</sup>

¶14 Restitution may be imposed where, as here, a defendant is found guilty of a major offense. See WIS. ADMIN. CODE § DOC 303.68(1)(a) (Dec. 2006) ("The adjustment committee may impose restitution in addition to or in lieu

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<sup>2</sup> Because we determine that Kuranda's petition was timely under WIS. STAT. § 893.735, we do not address Kuranda's alternative arguments as to timeliness.

<sup>3</sup> We frame Kuranda's main arguments as best we understand them, and with a liberal construction, because Kuranda appears pro se. See *State ex rel. L'Minggio v. Gamble*, 2003 WI 82, ¶16, 263 Wis. 2d 55, 667 N.W.2d 1 (we will liberally construe pro se pleadings). To the extent Kuranda has raised other arguments in his brief that are not addressed in this opinion, we deem those arguments insufficiently developed or not dispositive to this appeal. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (concluding that only dispositive issues need be addressed); see *Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (holding that reviewing court need not address arguments insufficiently developed).

of any major penalty and may impose any combination of penalties.”). However, to satisfy minimum due process requirements, a prison discipline decision must be supported by “a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken.” *Wolff v. McDonnell*, 418 U.S. 539, 563-65 (1974).

¶15 Here, at the time of the disciplinary decision, the hearing examiner ordered Kuranda to pay “restitution for medical expenses starting at 580.00.” The only explanation for the restitution was that “[b]oth inmates required medical attention at Waupun Memorial Hospit[a]l.” Later, DOC increased Kuranda’s restitution to \$2,548.17, and informed Kuranda the increase was based on updated medical bills.

¶16 Kuranda contends that there was no evidence to support the original restitution award, and no evidence or notice to support the subsequent increase. The State does not dispute that there was no evidence supporting the restitution amount presented at the disciplinary hearing and that Kuranda did not receive notice or an opportunity to dispute the subsequent increase. Rather, the State asserts that the medical bills are part of the record on certiorari because they were submitted to the circuit court for review and because correspondence from the prison to Kuranda stated the restitution had been increased based on medical bills. We do not find the State’s assertions responsive to Kuranda’s arguments. On certiorari review, we do not consider evidence first submitted to the circuit court, and the prison’s statements that it had increased Kuranda’s restitution based on medical bills adds nothing to our due process analysis.

¶17 The State cites *Thieme v. State*, 96 Wis. 2d 98, 102, 291 N.W.2d 474 (1980), for the proposition that the exact amount of restitution may be

deferred to a later time. *Thieme*, however, recognized that the defendant had the right to have the exact amount of restitution determined at a hearing. *Id.* at 102-05. *Thieme*, therefore, does not support the State's argument that the DOC's procedure of determining the amount of restitution without giving notice and an opportunity to be heard complied with due process.

¶18 Finally, the State concedes that the amount of the increased restitution is not supported by the medical bills in the record, and asserts the DOC made an error in calculation.<sup>4</sup> Based on the lack of evidence in the record to support the imposition of restitution, the lack of notice and opportunity to be heard in the calculation of the total amount of restitution, and the State's concession of error in calculating Kuranda's restitution, we reverse the restitution award and remand to the disciplinary hearing officer. On remand, the disciplinary hearing officer must supplement the decision to show the basis in the record for the restitution award. However, the taking of additional evidence must not offend considerations of due process and fair play. *State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 741, 454 N.W.2d 18 (Ct. App. 1990). If no basis exists for the restitution award, the restitution must be vacated.

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<sup>4</sup> The State points out that it had asked the circuit court to remand this case to the disciplinary hearing officer to correct the error, but that the circuit court denied that request because it dismissed Kuranda's petition as untimely. The State asserts DOC has now corrected that error on its own. This assertion, however, is not relevant to our review of the restitution award. See *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990) (explaining that our review of a disciplinary committee's decision is limited to the record created before the committee, and that we determine only: (1) whether the committee stayed within its jurisdiction; (2) whether it acted according to law; (3) whether its decision was arbitrary, oppressive or unreasonable and represented its will rather than its judgment; and (4) whether the evidence was such that it might reasonably make the decision it did).



¶19 In sum, we reverse the circuit court decision dismissing Kuranda's certiorari petition as untimely. Kuranda has provided no basis to disturb the disciplinary decision finding him guilty of fighting and imposing segregation, and we therefore affirm that part of the decision. However, we reverse the part of DOC's decision to impose restitution, and direct the circuit court to remand to the disciplinary hearing officer for further proceedings.

*By the Court.*—Order reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

