COURT OF APPEALS
DECISION
DATED AND FILED

February 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1383

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. PETER GALOWSKI,

PETITIONER-APPELLANT,

V.

GERALD BERGE, WARDEN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Peter Galowski appeals a circuit court order which dismissed his petition for a writ of certiorari. Galowski seeks review of a decision by the warden of the Fox Lake Correctional Institution refusing one of his visitation requests. We conclude that the refusal was well within the warden's authority under WIS. ADM. CODE § DOC 309.12(4)(e)8. Accordingly, we affirm.

Galowski and James Kennedy were inmates together at Fox Lake. Six months after Kennedy was released on mandatory parole, Galowski requested that Kennedy be added to his visitation list. Kennedy's parole agent denied him permission to visit Galowski and Galowski's visitation request was denied on the basis of the agent's disapproval. Galowski filed an inmate complaint, which was dismissed by the warden. He then exhausted his other administrative remedies before seeking certiorari review.

Our certiorari review is limited to the record created before the agency. ***State ex rel. Whiting v. Kolb***, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). We will consider only whether: (1) the agency stayed within its jurisdiction, (2) it acted according to law, (3) its action was arbitrary, oppressive or unreasonable and represented the committee's will and not its judgment, and (4) the evidence was such that the agency official might reasonably make the order or determination in question. ***Id***.

As a preliminary matter, Galowski challenges the validity of the return to the writ of certiorari. He claims that the correction complaint examiner's (CCE) recommendation and the secretary's decision on his administrative appeal were untimely and should not have been included in the return.[1] We agree, and will therefore limit our consideration to the warden's decision, which was automatically affirmed under WIS. ADM. CODE § DOC 310.13(7) when the CCE failed to make a recommendation within the proscribed time.

[1] The recommendation and decision indicate that, in addition to the parole agent's disapproval, Kennedy could be excluded from visitation because, as a former inmate, he represented a security risk to the institution.

Galowski first claims that, as a mandatory parolee who had been under supervision for more than six months, Kennedy was not among the people who could be excluded for visitation under WIS. ADM. CODE § DOC 309.12(4)(e)8. That section provides:

> A proposed visitor may be disapproved [for visiting or approved for no-contact visiting] if he or she is a mandatory release and discretionary parolee, probationer, or ex-offender who has not been released or under supervision for at least 6 months before approval unless the proposed visitor is an immediate family member…. In all cases, support for approval should come from the supervising agent or agencies involved.

In other words, Galowski contends that the phrase "who has not been released or under supervision for at least 6 months before approval" applies to all parolees, probationers and ex-offenders. We disagree. The three categories of people who may be excluded as visitors under the code provision are plainly: (1) mandatory release and discretionary parolees, (2) probationers, and (3) ex-offenders who have not been released or under supervision for at least six months prior to the visitation determination. As a mandatory parolee, Kennedy could be disapproved as a visitor.

Galowski further argues that, by basing his decision to deny visitation on the parole agent's decision, the warden improperly delegated his authority to approve and disapprove visitors to the parole agent. Again we disagree. The regulation specifically provides that approval of the supervising agent is a prerequisite for any proposed visitor who is on parole or probation. In other words, the warden does not even have authority under the regulation to approve as a visitor a parolee or probationer whose agent does not agree. The warden could not delegate an authority which he did not have. Moreover, even if

the warden did have the authority to approve visitors whose parole or probation agents did not approve, it is not a misuse of that authority to take the agent's view into account.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.