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**DISTRICT IV**

November 11, 2015

To:

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

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2014AP1111

State of Wisconsin ex rel. Jonathon M. Mark v. Edward F. Wall  
(L.C. # 2014CV827)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Jonathon Mark, pro se, appeals an order dismissing his petition for a writ of certiorari. 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 (2013-14).<sup>1</sup> We reject Mark's arguments, and summarily affirm the order.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version.

Mark sought to challenge a prison disciplinary decision finding that he engaged in business or other enterprises contrary to WIS. ADMIN. CODE § DOC 303.32. Mark, alleging flaws in the disciplinary process, sought administrative review. The final administrative decision dismissing Mark's complaint was dated October 21, 2013, and received by Mark on October 24, 2013. On certiorari review, the circuit court dismissed the petition as untimely. This appeal follows.

WISCONSIN STAT. § 893.735(2) sets a 45-day deadline for Wisconsin prisoners seeking certiorari relief from an administrative decision. Under the statute, the time limit for seeking certiorari review begins to run when an inmate has "actual notice of the decision or disposition" giving rise to his cause of action. Using Mark's October 24, 2013 receipt of the final administrative decision, his petition was due on or before December 9, 2013.<sup>2</sup> A prisoner's failure to meet the statutory filing deadline generally deprives the circuit court of subject matter jurisdiction. See *State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶5, 235 Wis. 2d 63, 611 N.W.2d 774.

In certain circumstances, the 45-day deadline may be extended by the equitable doctrine of tolling. See *State ex rel. Walker v. McCaughtry*, 2001 WI App 110, ¶¶13-16, 244 Wis. 2d 177, 629 N.W.2d 17. "[T]olling begins when the documents over which prisoners have control have been mailed, and all of the documents over which prisoners have no control have been

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<sup>2</sup> Because the forty-fifth day fell on Sunday, December 8, 2013, the due date shifted to Monday, December 9. See WIS. STAT. § 990.001(4)(b).

requested.” *Id.*, ¶18. “By requiring prisoners to submit documents under their control within a designated period, the prisoner is treated equitably and the legislative intent is fulfilled.” *Id.*

A prisoner seeking waiver of fees in a certiorari action must submit several documents to the court before the deadline is tolled, including a petition for a writ of certiorari, a request for a fee waiver and affidavit of indigency, a certified copy of the prisoner’s trust account statement, and authorization for the prison to make any appropriate payments toward the filing fees from the prisoner’s accounts. *Id.*, ¶12; *see also* WIS. STAT. § 814.29(1m). Additionally, the prisoner must submit a Department of Justice (DOJ) certification stating that the prisoner has not brought a frivolous or otherwise improper action or appeal on three or more prior occasions. *Walker*, 244 Wis. 2d 177, ¶12; *see also* WIS. STAT. §§ 801.02(7)(d) and 802.05(4)(b). Finally, the prisoner must include proof of exhaustion of administrative remedies. *See* § 801.02(7)(c).

In the present matter, Mark alleged that he timely placed his petition and other documents in the institution mailbox on or about December 3, 2013. Mark averred that he mailed the “Petition for Writ of Certiorari; Writ of Certiorari; Certification as to Three or More Dismissals; six months of my inmate trust account statement and my motion for Waiver of Fees and Costs, along with materials to show that I exhausted all of my administrative remedies.” The record shows that Mark’s mailing was received by the circuit court on December 10, 2013. In a letter dated that same day, court staff notified Mark of deficiencies with his petition and its supporting documents.

First, Mark was notified that he failed to provide either the filing fee or all documents necessary to establish his eligibility for waiver of the filing fee, including a *notarized* affidavit of indigency; a *certified* copy of Mark’s prison trust fund account for the last six months;

authorization to withhold payments from Mark's trust fund account; and an *original* certification from DOJ regarding the number of dismissals. Second, Mark was informed that he failed to submit full documentation of administrative exhaustion, including the relevant conduct report and the adjustment committee's written decision. Finally, Mark was notified that he failed to provide the full address of the parties to the petition and proposed writ, and also failed to provide the proper case classification and code. Mark claimed that he mailed any missing documents on December 16, 2013.

Mark argues that his initial incomplete certiorari filing is saved by the tolling rule, asserting that the deadline was tolled while he awaited the DOJ certification (requested November 5, 2013, and received November 14, 2013) and again while he awaited the certified prison trust fund account statement (requested December 1, 2013, and received December 9, 2013). As noted above, however, "tolling begins when the documents over which prisoners have control have been mailed, *and* all of the documents over which prisoners have no control have been requested." *Walker*, 244 Wis. 2d 177, ¶18 (emphasis added).

The *Walker* court characterized the following as documents over which an inmate has control for purposes of the tolling rule—the petition for fee waiver and affidavit of indigency, the authorization to withhold payments, the petition for a writ of certiorari, and the documentary proof of exhaustion of administrative remedies. *Id.*, ¶20. Mark alleges that his initial filing included documents that the clerk indicated were missing—specifically, the DOJ certification and the prison trust fund account statement. Mark further intimates that he should not be penalized if submitted documents were "tampered with" or inexplicably misplaced after he sent them. Even assuming the DOJ certification and prison trust fund account statement had been included in the initial filing, Mark concedes that he did not then submit full exhaustion

documentation, an affidavit of indigency, or the authorization to withhold payments. He did not submit these documents until December 16, 2013, which was beyond the statutory deadline.<sup>3</sup> The absence of any one of the required documents can lead to a rejection of the petition. *See Walker*, 244 Wis. 2d 177, ¶12. Because Mark did not timely submit all of the documents over which he had control, the 45-day deadline was not tolled and the circuit court properly dismissed Mark’s petition as untimely.<sup>4</sup>

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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<sup>3</sup> To the extent Mark argues that he was unaware “that he had to provide the court with his exhaustion materials, when it came to the CR hearing and appeal,” ignorance of the law is no defense. *See State v. Jensen*, 2004 WI App 89, ¶30, 272 Wis. 2d 707, 681 N.W.2d 230.

<sup>4</sup> Mark notes that in a December 17, 2013 letter, he asked the clerk to return his petition and proposed writ to him to correct the caption. Mark further notes that his father paid the filing fee on December 20, 2013. Mark asserts that the clerk’s delay in returning the petition and proposed writ and in submitting the petition to the court once the filing fee was paid somehow entitles him to additional tolling of the statutory deadline. Mark’s arguments for application of the tolling rule after the deadline expired have no bearing on the outcome of his appeal, as these alleged delays do not cure Mark’s failure to timely submit those documents over which he had control.