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DISTRICT II

December 28, 2016

To:

Hon. Paul V. Malloy
Circuit Court Judge
Ozaukee County Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2015AP2620

State of Wisconsin ex rel. Christian Pressley v. Irene Fiacchino
(L.C. # 2015CV437)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Christian Pressley appeals from an order dismissing his petition for a writ of mandamus against Irene Fiacchino and Donna Harris, employees of the Wisconsin Department of Corrections (DOC). 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).¹ Because Pressley failed to exhaust his administrative remedies before filing suit, we affirm.

Pressley commenced this action in the circuit court as a petition for a writ of mandamus seeking to enforce the public records law. *See* WIS. STAT. § 19.37. His petition alleged that

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

while incarcerated, he made numerous requests to the DOC for information about the incident leading to his re-incarceration, and eventually, requested his “entire file.” The DOC granted his request and provided what it indicated was the entire file. In his petition, Pressley did not allege that the DOC denied his requests, but asserted:

The Defendants have still not provided the entire file, omitting several significant emails and memos, one of which was used by the Ozaukee County ADA to determine sentencing recommendation.

The circuit court dismissed Pressley’s petition based on its failure to establish certain “conditions precedent” to receiving a writ in a public records case. Pressley appeals.

Where “an authority withholds a record or part of a record” after a written request under the open records law, the method of review is by writ of mandamus. WIS. STAT. § 19.37(1). However, an inmate’s right to mandamus is subject to WIS. STAT. § 801.02(7), which requires the exhaustion of administrative remedies before an action may be commenced. *Moore v. Stahowiak*, 212 Wis. 2d 744, 749-50, 569 N.W.2d 711 (Ct. App. 1997).

The State argues that the circuit court properly dismissed Pressley’s petition because as an inmate, he was required but failed to exhaust his administrative remedies before seeking mandamus. As acknowledged in Pressley’s petition, the DOC responded to his records requests using Form DOC-1160. That form advised Pressley of his appeal rights, specifically, that if he believed his request was denied in some way, he needed to appeal in writing “to the Department Legal Custodian, Bill Clausius.” The form provided the custodian’s address and stated that if Pressley remained aggrieved after the custodian’s decision, he could “further appeal by petitioning the Circuit Court for a writ of mandamus ordering release of the record(s), or you

may apply to the Attorney General or the District Attorney of the county where the records are held.”

We agree with the State that the circuit court properly dismissed Pressley’s petition because Pressley failed to first exhaust his administrative remedies, a “condition[] precedent” to pursuing mandamus in the circuit court.² Pressley did not appeal in writing to the DOC’s legal record custodian. Further, Pressley has not filed a reply brief to refute the State’s arguments. An argument asserted by a respondent on appeal and not disputed by the appellant’s reply brief is deemed admitted. *See Fischer v. Wisconsin Patients Comp. Fund*, 2002 WI App 192, ¶1 n.1, 256 Wis. 2d 848, 650 N.W.2d 75.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

² To the extent that Pressley’s failure to exhaust administrative remedies was not the specific basis for the circuit court’s decision, this court can affirm on alternate grounds. *State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987).