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DISTRICT II

August 19, 2026

To:

Hon. Kristine E. Drettwan
Circuit Court Judge
Electronic Notice

John D. Flynn
Electronic Notice

Michele Jacobs
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Robert W. Brown #546220
Fox Lake Correctional Institution
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You are hereby notified that the Court has entered the following opinion and order:

2025AP1671-CR	State of Wisconsin v. Robert W. Brown (L.C. #2015CF224)
2025AP1672-CR	State of Wisconsin v. Robert W. Brown (L.C. #2015CF191)

Before Lazar, P.J., Gundrum, and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated cases, Robert W. Brown, pro se, appeals from orders of the circuit court dismissing his petitions for writ of certiorari as untimely. 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 (2023-24).¹ For the following reasons, we affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

BACKGROUND

In 2015, the State charged Brown with failure to comply with sex offender registry requirements arising from a 2002 conviction in Illinois and attempting to flee a traffic officer and escaping arrest in separate cases. Brown pled guilty to the failing to comply charge and a jury found him guilty of escaping arrest. The circuit court sentenced him to concurrent sentences of 18 months of confinement and 3 years of extended supervision. The court made Brown eligible for the substance abuse program, and after Brown successfully completed the program, he was released onto extended supervision in March 2018.

On December 17, 2024, after a hearing, an administrative law judge (ALJ) issued a decision to revoke Brown's extended supervision.² Pursuant to WIS. ADMIN. CODE § HA 2.05(8)(a) (Nov. 2024), Brown had ten days in which to file an administrative appeal of the ALJ's decision. Brown's attorney filed for administrative review of the ALJ's decision on January 7, 2025, one day past the deadline, and thus, on February 5th, the division administrator denied the appeal, "due to [it] being 'untimely.'"

On May 29, 2025, Brown filed petitions for writ of certiorari in the circuit court. The court denied the petitions, noting that Brown had 45 days to seek certiorari relief from the division administrator's February 5th denial and concluding the petitions filed May 29th were "clearly well past the 45 day mark and untimely."

Brown appeals the circuit court's orders denying of his petitions for writ of certiorari.

² The documents relating to the revocation proceedings are not in the record. Brown had set forth the relevant dates in his petitions, and the State relied on those dates in its response brief. We will use those same dates.

DISCUSSION

In his appeal, Brown admits he petitioned for certiorari outside of the 45-day deadline. We conclude that because Brown did not timely appeal the decision of the division administrator, his petitions for certiorari are time barred. See *State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶7, 235 Wis. 2d 63, 611 N.W.2d 774; WIS. STAT. § 893.735(2).

This case involves the application of a statute, which presents a question of law this court reviews de novo. *State ex rel. Locklear v. Schwarz*, 2001 WI App 74, ¶16, 242 Wis. 2d 327, 629 N.W.2d 30. WISCONSIN STAT. § 893.735(2) provides: “[a]n action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues” and the “45-day period shall begin on the date of the decision or disposition.” A prisoner is “required to strictly follow” § 893.735 “whether acting pro se or with the assistance of counsel.” *Cooke*, 235 Wis. 2d 63, ¶7.

Brown does not dispute that he was informed of the denial of his administrative appeal on February 5, 2025, and that he did not file his petitions until May 29th, more than 100 days later. Brown does assert, for the first time in his reply brief, that because his revocation counsel promised to file for certiorari and failed to do so, he is entitled to the equitable tolling of the 45-day deadline, as recognized in *State ex rel. Griffin v. Smith*, 2004 WI 36, ¶38, 270 Wis. 2d 235, 677 N.W.2d 259. In *Griffin*, our supreme court concluded that

petitioners are entitled to equitable relief when they timely ask counsel to file for certiorari, counsel promises to do so, and as a result of counsel’s failure to timely file they were denied certiorari review. Provided that the petitioners timely pursue relief, the 45-day time limit for the filing of a writ of certiorari is equitably tolled as of the date that counsel promises to file for certiorari review.

Id. Because Brown raises this issue for the first time in his reply brief, we do not consider it. See *Northern States Power Co. v. National Gas Co.*, 2000 WI App 30, ¶21 n.6, 232 Wis. 2d 541, 606 N.W.2d 613 (“[W]e [do not] consider arguments made for the first time in a reply brief to which the respondent does not have the opportunity to respond.”). Accordingly, Brown failed to comply with the 45-day deadline, and we affirm the circuit court’s orders.

Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals