

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 7, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 97-1039**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. ALEXANDER MAYES,**

**PLAINTIFF-APPELLANT,**

**V.**

**DAVID H. SCHWARZ, ADMINISTRATOR, DIVISION OF  
HEARINGS AND APPEALS,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Rock County: J.  
RICHARD LONG, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Higginbotham, JJ.<sup>1</sup>

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<sup>1</sup> Circuit Judge Paul B. Higginbotham is sitting by special assignment pursuant to the Judicial Exchange Program.

PER CURIAM. Alexander Mayes appeals from an order affirming revocation of his probation.<sup>2</sup> The issue is whether the revocation proceedings were held within a reasonable time. We affirm.

The basic facts are not in dispute. Mayes was on probation and serving jail time in 1989. He absconded and was apprehended in Illinois in October 1990. He was charged with and then convicted of a felony in Illinois. After serving his prison term, he was returned to Wisconsin in 1995, at which time probation revocation proceedings were commenced.

Mayes argues that revocation was not commenced within a reasonable time after he was taken into custody, as required by *Morrissey v. Brewer*, 408 U.S. 471 (1972). Mayes concedes that subsequent case law has held that a hearing is not required while the probationer is in custody on other matters. However, he argues, in this case he was held in custody in Illinois because Illinois would not release him on bail while the Wisconsin detainer was pending. We reject this argument because Mayes was held in custody in Illinois due to the pending felony charge and because there is no evidence that Mayes would have been able to raise bail. Additionally, he has not shown any prejudice from the delay.

Mayes also argues that the revocation should be reversed because the department of corrections violated some of its own rules. He argues that the

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<sup>2</sup> The notice of appeal in this case was not filed within the time provided in § 808.04, STATS. However, Mayes earlier filed a “notice of intent to pursue postconviction relief” seeking relief from denial of his certiorari petition to review the probation revocation. This was not the proper method to seek review of the certiorari proceedings, since such relief is not sought under RULE 809.30, STATS. However, we construe the notice of intent as a notice of appeal and, as such, it is timely.

department did not timely investigate the facts and meet with him within a reasonable time. However, we conclude that the department was not obliged to follow Mayes to Illinois to do so. The delay was caused by Mayes' flight and subsequent conduct in Illinois. The department's investigation occurred within a reasonable time after his return to Wisconsin.

*By the Court.*—Order affirmed.

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

