

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 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.

**Nos. 97-2357
97-3004
97-3329**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL. RONALD A. KEITH,
SR.,**

PETITIONER-APPELLANT,

V.

WILLIAM D. RIDGELY,

RESPONDENT-RESPONDENT.

APPEALS from orders of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

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

PER CURIAM. Ronald Keith, Sr. appeals from orders affirming William Ridgely's denial of three open records requests. Keith is confined at the Wisconsin Resource Center pursuant to ch. 980, STATS. Ridgely is records

custodian for the Department of Corrections. In these consolidated actions, Keith challenged Ridgely's refusal to provide records concerning him and three inmates. We conclude that the trial court properly denied relief on Keith's petitions, and therefore affirm.

In appeal No. 97-2357, Keith requested any November 1992 documents asking that Gerald Miles Turner be apprehended and detained under § 53.11, STATS., any documents to or from the DOC pertaining to its decision to recalculate other inmates sentences, "including letters to your legal department and from them back to your department" during a three-month period, and any documents pertaining to Keith dating from November 1993 to July 1994, pertaining to his detention or release under § 53.11, sentence recomputation.

Ridgely denied the first and third request because § 53.11, STATS., 1987-88, no longer existed.¹ Ridgely denied the second part of the request citing the attorney-client privilege.

In appeal No. 97-3004, Keith described and asked for specific DOC documents concerning William Hurt, which he also described as generated after dismissal of Hurt's ch. 980, STATS., action, and documents ordering certain persons at the Wisconsin Resource Center to release Hurt to federal authorities in September 1996. Ridgely responded that there were no records concerning Hurt after his ch. 980 action because that action had not been dismissed. He also told Keith that no documents existed matching the description in the second part of his request.

¹ Section 53.11, STATS., 1987-88, was renumbered and amended by 1989 Wis. Act 31, § 1629.

In appeal No. 97-3329, Keith requested information on DOC plans to file a ch. 980, STATS., petition against Gerald Dampier. That request was refused

based on the fact that you are an offender under the supervision of the Department of Corrections and that you may use this information in a manner which could cause disruption to the incarceration and treatment of an inmate, thereby jeopardizing the safety of the inmate and the security of the institution to which he is assigned if the information is transmitted to one or more other inmates or offenders.

Keith responded with a second request for more specific information regarding Dampier. The request was again refused on similar grounds and because some of the specific information was confidential and would not be disclosed in order to protect Dampier's privacy.

In each case, Keith filed a petition for mandamus review, seeking an order requiring Ridgely to release the requested documents. In appeal No. 97-2357, the trial court rejected Ridgely's reason for denying the § 53.11, STATS., 1987-88, documents, and ordered him to either produce the documents or deny the request properly within twenty days. The trial court affirmed the refusal to release documents protected by the attorney-client privilege. The trial court subsequently found that the DOC had none of the § 53.11 documents, and denied Keith's motion for damages.

In appeal No. 97-3004, the court held that Ridgely should have known what documents Keith sought despite his mistake about the dismissal of Hurt's case, and should have provided them despite that error. However, the trial court dismissed the petition because Keith could have easily remedied the situation by submitting an amended request, once he learned the true status of

Hurt's case. The trial court also dismissed on the second part of Keith's request after finding that the documents in question did not exist.

In appeal No. 97-3329, the trial court held that Ridgely properly denied all documents because there was an overriding public interest in keeping those documents confidential.

Except as provided by law, as a rule any person has a right to inspect any public record. Section 19.35(1)(a), STATS.; *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis.2d 818, 822, 429 N.W.2d 772, 773 (Ct. App. 1988). However, that right is not absolute and access is barred when the public interest and nondisclosure outweighs the right to inspect. *Id.* at 822, 429 N.W.2d 774. When denying access on public policy grounds, the custodian must state specific reasons for the denial. *Id.* Whether the reasons given are sufficient to outweigh an applicant's interest in inspecting the records is a question of law. *State ex rel. Morke v. Record Custodian DHSS*, 154 Wis.2d 727, 733, 454 N.W.2d 21, 24 (Ct. App. 1990). Additionally, any record containing personally identifiable information need not be disclosed if it endangers the security of any state correctional institution. Section 19.35(1)(am)2, STATS.

Case Number 97-2357

The trial court properly denied damages or any other remedy to Keith. Keith initially prevailed on part of his claim, and obtained an order requiring Ridgely to reprocess his request. However, in a subsequent hearing on the matter, Ridgely's counsel stated that a search of DOC records revealed no documents within the scope of Keith's request. Keith offers no persuasive reason why the trial court could not and should not have believed counsel's

representation. His claim that the documents did, in fact, exist, was not substantiated.

The trial court also properly denied Keith's request for documents to or from DOC legal counsel. In most cases where the records custodian claims the attorney-client privilege, the trial court must conduct an *in camera* inspection of the documents to determine whether the claim is accurate. ***George v. Record Custodian***, 169 Wis.2d 573, 582, 485 N.W.2d 460, 464 (Ct. App. 1992). In this case, however, no *in camera* inspection was required because the documents in question were by Keith's definition privileged. It is the communication and not the facts in a communication that the attorney-client privilege protects. ***State ex rel. Dudek v. Circuit Court***, 34 Wis.2d 559, 580, 150 N.W.2d 387, 399 (1967).

Case No 97-3004

The trial court properly denied relief on Keith's request in this case, despite finding that he had a right to the requested records. A decision whether to grant mandamus is discretionary. ***George***, 169 Wis.2d at 578, 485 N.W.2d at 462. Mandamus should not issue if the petitioner has an adequate, convenient legal remedy. ***State ex rel. Sheboygan County v. Telgener***, 199 Wis. 523, 526-27, 227 N.W. 35, 37 (1929). Here, Keith's request was refused on what was essentially an easily remedied technicality. The trial court reasonably concluded that all Keith had to do was submit an amended request, rather than taking the matter to court on mandamus.

Case Number 97-3329

The trial court properly affirmed Ridgely's refusal to allow Keith access to records concerning the treatment of and plans for inmate Dampier. In

State ex rel. Morke, 154 Wis.2d 727, 733-34, 454 N.W.2d 21, 24 (Ct. App. 1990), we affirmed the refusal to provide free access to conviction records without the subject inmate's permission. In that case, the requester's interest in those records was substantially outweighed by the correctional institution's interest in rehabilitating inmates and protecting their safety, and the public's interest in protecting and rehabilitating inmates. *Id.* Those interests potentially weigh even more heavily here, given the specific nature of the information Keith requested concerning Dampier's treatment and status. Therefore, the trial court reasonably dismissed Keith's petition. Additionally, § 51.30(4), STATS., provides, with exceptions not applicable here, that "all treatment records shall remain confidential and are privileged to the subject individual." The policy expressed in this section also outweighs Keith's claim to specific information concerning the inmate's treatment.

By the Court.—Orders affirmed.

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

