

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 24, 1999

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. 99-0474

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. QUENTIN C. WARD,

PLAINTIFF-APPELLANT,

V.

JEFFREY P. ENDICOTT,

DEFENDANT-RESPONDENT.

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

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

¶1 PER CURIAM. Quentin Ward, *pro se*, appeals from the trial court's order dismissing his petition for writ of certiorari. The issue is whether the trial court properly dismissed Ward's petition because he failed to exhaust his administrative remedies prior to filing the petition. We affirm.

¶2 Ward filed a petition for writ of certiorari in the trial court on August 12, 1998, and served it on Jeffrey Endicott, the superintendent of Columbia Correctional Institution, on October 20, 1998. The trial court dismissed the petition on February 9, 1999, because Ward had failed to exhaust his administrative remedies.

¶3 Ward claims that the petition should not have been dismissed because his administrative remedies were exhausted by the time he served the warden on October 20, 1998. The State does not dispute that Ward had exhausted his administrative remedies by October 20, but contends that the petition should be dismissed because § 801.02(7), STATS., 1995-96, the statute in effect when Ward filed this action, required that administrative remedies be exhausted before a petition *is filed*, not before it is served.

¶4 Section 801.02(7), STATS., 1995-96, provided that “[n]o prisoner ... may commence a civil action ... until the person has exhausted any administrative remedies that the department of corrections has promulgated by rule.”¹ An action is “commenced” when a summons and complaint naming the respondent is filed in the trial court. *See* §§ 801.02(1) and (5), STATS. Because this action was filed in the trial court before Ward exhausted his administrative remedies, we conclude that the trial court properly dismissed this case.

¶5 Ward argues that the exhaustion and pleading requirements of §§ 801.02(7)(b) and (c), STATS., 1997-98, should not apply to him because he commenced his action on August 12, 1998, and § 801.02(7) was not amended until

¹ Section 801.02(7), STATS., 1995-96, was amended effective September 1, 1998, as part of the Prison Litigation Reform Act. The portion of the statute listed above was renumbered § 801.02(7)(b) and changed in ways not relevant to this opinion.

September 1, 1998. The legislature specifically provided, however, that the amended statute applies to “petitions for a common law writ of certiorari pending on the effective date [of the amended statute].” *See* 1997 Wis. Act 133, § 43(1). Regardless, Ward was required to exhaust his administrative remedies before commencing an action in the trial court under both versions of the statute.

By the Court.—Order affirmed.

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

