COURT OF APPEALS
DECISION
DATED AND FILED

December 30, 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. 99-1804

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. LARRY TIEPELMAN,

PETITIONER-RESPONDENT,

v.

PHIL KINGSTON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed in part; reversed in part.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Phil Kingston, the warden of the Oregon Correctional Institution (OCI), appeals from a circuit court order reversing a prison disciplinary decision against Larry Tiepelman. Kingston claims the order exceeded the scope of the circuit court's certiorari authority by including

reinstatement and backpay provisions. We agree, and reverse those portions of the circuit court's order.

BACKGROUND

¶2 Tiepelman filed a certiorari action challenging the prison adjustment committee's determination that he was guilty of theft, the unauthorized transfer of property and lying, and requiring him to pay restitution. Tiepelman also asked that all the collateral consequences arising from the conduct report, including his removal from a desirable job assignment and transfer to another institution based on his misconduct, be reversed.

¶3 After a lengthy procedural history which is not relevant here, the circuit court found Tiepelman's hearing on the conduct report had been untimely. The circuit court entered an order which: (1) reversed the prison disciplinary decision and restitution order against Tiepelman; (2) ordered the records of the disciplinary action to be expunged except for statistical purposes as provided in WIS. ADM. CODE § DOC 303.85(2); (3) ordered OCI to reinstate Tiepelman into his prior job assignment in the event that the Department of Corrections (DOC) exercised its discretion to transfer him back to that institution; and (4) ordered the DOC to pay Tiepelman back wages.

¶4 Kingston filed the present appeal, challenging the reinstatement and backpay portions of the circuit court's order. Kingston also moved to stay execution of the order pending appeal. The circuit court granted the stay, acknowledging that monetary damages are not available on certiorari review, but did not amend its order.

STANDARD OF REVIEW

¶5 Our certiorari review generally focuses on the actions of the administrative agency, rather than the decision of the circuit court. *See* ***State ex rel. Whiting v. Kolb***, 158 Wis.2d 226, 233, 461 N.W.2d 816, 819 (Ct. App. 1990). However, our de novo review also allows us to independently determine whether the remedy devised by the circuit court exceeded the scope of its certiorari authority.

ANALYSIS

¶6 Monetary damages are not available on certiorari review. ***Coleman v. Percy***, 86 Wis.2d 336, 341, 272 N.W.2d 118, 121 (Ct. App. 1978), *aff'd* 96 Wis.2d 578, 292 N.W.2d 615 (1980). Nor may a certiorari court compel an agency official to perform a specific act, such as transferring a prisoner to another institution. ***State ex rel. Richards v. Leik***, 175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct. App. 1993). We therefore agree with Kingston that the provisions of the circuit court order directing Tiepelman to be reinstated and given backpay exceeded the scope of certiorari review, and we reverse those portions of the order.

¶7 Kingston has not challenged the circuit court's determination that Tiepelman's disciplinary hearing was untimely, and has agreed to expunge the conduct report and return the restitution award to Tiepelman's prison account. Therefore, we affirm those portions of the order.

By the Court.—Order affirmed in part; reversed in part.

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