

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP125

Cir. Ct. No. 2004CV10048

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. DONALD S. JAMES,

PETITIONER-APPELLANT,

v.

**TIM WILKENING, CHAD FREY, JANICE CUMMINGS,
MATTHEW FRANK, RICK RAEMISCH, MAYUMI ISHII,
DAVID H. SCHWARTZ AND JUDY SMITH,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
MAXINE A. WHITE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Donald James appeals from an order of the circuit court denying his petition for a writ of *habeas corpus* challenging the revocation of his parole. Because the proper legal challenge to parole revocation is by a

petition for *certiorari* relief filed no later than forty-five days after the cause of action accrues, we affirm the order.

¶2 James filed a petition for *habeas corpus* relief in the circuit court on November 17, 2004. James's parole was revoked on January 6, 2004. His petition claimed that his parole revocation and subsequent detention were unlawful because he had not committed a new crime. The circuit court denied the petition and James appeals.

¶3 Challenges to parole revocation are properly brought as a *certiorari* petition pursuant to WIS. STAT. § 893.735(2) (2003-04).¹ Such actions are due for filing no later than forty-five days after the action accrues. In this case, the action accrued forty-five days after the revocation order was entered by the Division of Hearings and Appeals.

¶4 The circuit court recognized its obligation to liberally construe James's petition for *habeas corpus* as one seeking *certiorari* relief but concluded that the petition was too late:

It has been well established that courts are required to liberally construe *pro se* claims and “look beyond the legal label affixed by the prisoner to a pleading and treat a matter as if the right procedural tool was used.” State ex rel. McMillan v. Dickey, 132 Wis.2d 266, 279, 392 N.W.2d 453, 457-38 (Ct. App. 1986).

Had this petition been filed within 45 days of the date that the Division of Hearings & Appeals filed its appellate decision, then Respondent would have requested that this petition be treated as one for *certiorari*. However, the decision apparently occurred on January 6, 2004 (see

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

attachment to the Motion to Dismiss). The instant petition was not filed until November 17, 2004, 10-1/2 months after the Division revoked the petitioner's parole.

Because the petitioner has not complied with the 45-day filing deadline that Wis. Stats. §893.735(2) (1997-98) imposed on persons subject to the Wisconsin Prison Litigation Reform Act, this court orders this petition dismissed.

¶5 Because the circuit court's reliance on WIS. STAT. § 893.735(2) was correct and its application to the undisputed facts was sound, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

