

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 14, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0084

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. LEWIS ALTMAN, JR.,

PETITIONER-APPELLANT,

V.

GARY R. McCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County:
JOSEPH E. SCHULTZ, Judge. *Reversed and cause remanded.*

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

¶1 PER CURIAM. Lewis Altman appeals from an order dismissing his petition for certiorari review of a prison disciplinary decision. The issue is whether Altman timely filed his petition. We conclude that he did, and therefore reverse.

¶2 Altman, formerly a prisoner at Waupun Correctional Institution and now incarcerated in another state, received a final administrative determination in a prison disciplinary case on June 13, 1999. On June 29, while still in Waupun, he presented the trial court with a petition for writ of certiorari, accompanied by a fee waiver request and an affidavit of indigency. On July 21, the trial court denied a fee waiver. In a letter dated July 28 and received by the court on August 2, Altman informed the court that the Waupun business office had refused to release funds from his account to pay the filing fee, and asked for an order to disburse the funds. Enclosed with his letter was his disbursement request and a business office denial of that request. On September 1, the trial court issued the order Altman requested, directing Waupun Correctional Institution to pay the Dodge County Clerk of Courts \$122 for Altman's filing fee. The institution sent the money and the action was filed on September 13. The trial court subsequently dismissed it as untimely filed.

¶3 A prisoner seeking certiorari review of a Department of Corrections administrative decision must commence the action within forty-five days after the cause of action accrues. *See* WIS. STAT. § 893.735(2) (1997-98).¹ However, if the prisoner submits a fee waiver request, the forty-five-day period is tolled while the court considers that request. *See State ex rel. Steldt v. McCaughtry*, 2000 WI App 176, ¶17, Nos. 99-2000, 99-2001, 99-2110. If the trial court denies the request, the forty-five-day time limit begins to run once again when the prisoner receives the trial court's order. *See id.* at ¶18. The action is then considered filed on the date the prisoner requests disbursement of the ordered amount from his or

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

her prison accounts, “because at that point the payment to the clerk of courts is in the control of the prison.” *Id.*

¶4 In this case, Altman submitted his petition and requested a fee waiver sixteen days after his cause of action accrued. The forty-five days for filing the petition was then tolled until Altman received the trial court’s order of July 21 denying him a fee waiver. Sometime within the next seven days Altman requested disbursement of the filing fee, and it was ultimately paid, pursuant to court order, on or about September 8.² Under *Steldt*, all of the time that elapsed after Altman requested disbursement of the filing fee does not count against his forty-five-day deadline because payment of the fee was out of his control at that point. Therefore, not counting the days that were tolled while the trial court decided the fee waiver issue, Altman’s petition was filed not more than twenty-three days into the forty-five-day period. We therefore reverse the trial court’s order dismissing the petition, and remand for further consideration of it on the merits.

By the Court.—Order reversed and cause remanded.

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

² The record does not show the exact date Altman submitted his disbursement request, only that he did so before July 28.

