

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 14, 2001

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. 00-0696**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. LEROY REISCH,**

**PETITIONER-APPELLANT,**

**V.**

**DAVID SCHWARZ, ADMINISTRATOR, DIVISION OF  
HEARINGS AND APPEALS,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Dodge County:  
JOSEPH E. SCHULTZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. LeRoy Reisch appeals the trial court's order dismissing his petition for writ of certiorari as untimely filed under the Prison Litigation Reform Act (PLRA). Reisch argues that the PLRA violates his right to

equal protection because it requires prisoners in Wisconsin to file petitions for certiorari review within forty-five days, but does not require those incarcerated outside of Wisconsin to file within this truncated deadline.<sup>1</sup> He also contends that the PLRA violates his right to substantive due process. We reject these arguments and affirm.

¶2 Reisch's parole was revoked on September 21, 1998. The Division of Hearings and Appeals affirmed the revocation order on October 9, 1998. Reisch filed a petition for certiorari review with the circuit court on April 9, 1999, six months after the Division's order affirming his revocation. The circuit court dismissed the petition because Reisch had filed it more than forty-five days after the order affirming his revocation. *See* WIS. STAT. § 893.735(2) (1999-2000).<sup>2</sup>

¶3 Reisch contends that his petition was timely filed because the standard six-month deadline for filing a writ of certiorari applies to him, not the forty-five day deadline provided in the PLRA. He argues that the PLRA does not apply to him because the statute is unconstitutional. He contends that the statute violates equal protection because it applies abbreviated filing deadlines to some prisoners while identically situated prisoners are not subject to the shortened deadlines.<sup>3</sup>

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<sup>1</sup> The deadline is usually six months. *State ex rel. Czapiewski v. Milwaukee City Serv. Comm'n*, 54 Wis. 2d 535, 538, 196 N.W.2d 742 (1972) (certiorari proceedings must be commenced within six months unless otherwise provided by statute).

<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>3</sup> Reisch also contends that other provisions of the PLRA, such as those relating to fee payment, violate equal protection. We do not address these aspects of the law because this case does not squarely present these issues for review.

¶4 We recently rejected this argument in *State ex rel. Saffold v. Schwarz*, 2001 WI App 56, 241 Wis. 2d 253, 625 N.W.2d 333, *review denied*, 2001 WI 43, 242 Wis. 2d 545, \_\_\_ N.W.2d \_\_\_ (Wis. Apr. 5, 2001) (No. 99-2945). Clarence Saffold argued that the PLRA violated equal protection because its filing deadlines apply to in-state prisoners, but not to out-of-state prisoners. We disagreed, concluding that there was a rational basis for distinguishing between in-state and out-of-state prisoners for purposes of filing deadlines under the PLRA. *Id.* at ¶7.<sup>4</sup> We explained that Wisconsin legal resources, including statutes, case law, and attorneys conversant with Wisconsin law, are more readily available to prisoners incarcerated in Wisconsin. *Id.* at ¶10. In-state and out-of-state prisoners are therefore not “identically situated” because out-of-state prisoners may need more time than in-state prisoners to prepare legal documents. Based on *Saffold*, we reject Reisch’s argument.<sup>5</sup>

¶5 Reisch also contends that the PLRA violates his right to substantive due process. “Governmental action violates ‘substantive due process’ when the action in question, while adhering to the forms of law, unjustifiably abridges the

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<sup>4</sup> Reisch contends that a strict scrutiny test should apply “because the PLRA impairs the fundamental right of access to the courts based on whether the prisoner can pay the filing fee.” We applied a rational basis test in *State ex rel. Saffold v. Schwarz*, 2001 WI App 56, ¶11, 241 Wis. 2d 253, 625 N.W.2d 333, *review denied*, 2001 WI 43, 242 Wis. 2d 545, \_\_\_ N.W.2d \_\_\_ (Wis. Apr. 5, 2001) (No. 99-2945). We will not revisit this issue. See *Cook v. Cook*, 208 Wis. 2d 166, 190 ¶55, 560 N.W.2d 246 (1997) (we may not modify or withdraw language from a previously published decision made by this court).

<sup>5</sup> Reisch argues that our recent decision in *State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, 239 Wis. 2d 327, 620 N.W.2d 409, undermines the State’s argument that there is a rational basis for treating out-of-state prisoners differently than in-state prisoners because *Shimkus* “refutes the state’s claim that the legislature had a rational reason for providing greater time limits to out-of-state prisoners whose legal filings might take longer to mail.” Although the *Shimkus* mailbox rule equalizes differences in mailing time between in-state and out-of-state prisoners, our primary reason for ruling that the PLRA filing deadlines do not violate equal protection was that in-state prisoners have more ready access to Wisconsin legal resources. *Saffold*, 2001 WI App 56 at ¶10. Disparity in mailing times was not a basis for our decision.

Constitution’s fundamental constraints upon the content of what government may do to people under the guise of the law.” *Reginald D. v. State*, 193 Wis. 2d 299, 307, 533 N.W.2d 181 (1995). The supreme court has explained that “‘due process requires that the means chosen by the legislature bear a reasonable and rational relationship to the purpose or object of the enactment ....’” *Id.*

¶6 The purpose of the PLRA is “‘to restrict frivolous lawsuits’ and ‘to limit broadly prisoner litigation at taxpayers’ expense.’” *Saffold*, 2001 WI App 56 at ¶11. The legislature shortened deadlines under the PLRA, thus requiring prisoners to act promptly after receiving an adverse decision and preventing prisoners who do not act promptly from further litigating their claims. These abbreviated deadlines have a “reasonable and rational relationship” to the goal of limiting prisoner litigation. Therefore, we reject Reich’s argument that the PLRA filing deadlines violate his right to substantive due process.

*By the Court.*—Order affirmed.

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

