

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 17, 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. 00-1211**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN EX REL. JON F. WINANT,**

**PETITIONER-APPELLANT,**

**V.**

**DAVID SCHWARZ,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DAVID HANSHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jon Winant, pro se, appeals from an order dismissing his petition for certiorari review of a decision revoking his probation. The issue is whether Winant's petition was filed within forty-five days after the

revocation decision as required by WIS. STAT. § 893.735(2) (1999-2000).<sup>1</sup> We conclude that it was not. Therefore, we affirm.

¶2 On October 28, 1999, a hearing examiner revoked Winant's parole. On November 30, 1999, David Schwarz, Administrator, Division of Hearings and Appeals, affirmed the decision. On December 28, 1999, Winant attempted to file a petition for certiorari review in the circuit court, but all materials were returned to him because he had not submitted proper documentation to support his request for a fee waiver.<sup>2</sup> On January 31, 2000, Winant resubmitted his petition with the proper documentation. On February 10, 2000, the circuit court dismissed the petition as untimely.

¶3 WISCONSIN STAT. § 893.735(2) provides that a petition for certiorari must be commenced by a prisoner within forty-five days after the decision subject to review is made, except that the court may extend the period by as many days as the prisoner proves have elapsed between the decision and the prisoner's actual notice of the decision. The clerk of the circuit court filed Winant's petition on January 31, 2000, sixty-two days after the date of the final administrative decision revoking his probation. Therefore, the circuit court properly dismissed the petition as untimely filed.

¶4 Winant contends that the circuit court should have construed his filing date as December 28, 1999, when he initially submitted the petition. The

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>2</sup> The date of the hearing examiner's decision and the date of Schwarz's decision are listed in the circuit court's decision. Apparently, the circuit court obtained these dates by reference to documents outside the record. In any event, Winant agrees in his brief that the decisions were issued on these dates.

forty-five day period for filing will be tolled when a petition for certiorari review is submitted with a request for fee waiver, supported by proper documentation, until the circuit court considers the request for fee waiver and issues an appropriate order. *State ex rel. Steldt v. McCaughtry*, 2000 WI App 176, ¶17, 238 Wis. 2d 393, 617 N.W.2d 201. Here, however, Winant did not present the circuit court clerk with the proper documentation for fee waiver in the first instance. Therefore, the *Steldt* tolling rule does not apply.<sup>3</sup>

*By the Court.*—Order affirmed.

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

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<sup>3</sup> The State also argues that the petition for certiorari review was properly dismissed because Winant did not file an administrative appeal of the hearing examiner's decision within ten days as required under WIS. ADMIN. CODE § HA 2.05(8)(a). The supreme court recently rejected this argument. See *State ex rel. Mentek v. Schwarz*, 2001 WI 32, 242 Wis. 2d 94, 624 N.W.2d 150.

