

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 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. 00-1780

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JIMMY BRIDGES,

PETITIONER-APPELLANT,

V.

GERALD BERGE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Reversed and cause remanded with
directions.*

Before Vergeront, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Jimmy Bridges appeals from an order dismissing his certiorari petition and finding the petition frivolous. Because the circuit court

did not state any reasons for its conclusions, we reverse and remand for further proceedings.

¶2 Bridges is a prison inmate. He filed a certiorari petition seeking review of an administrative confinement decision. The circuit court ordered the record returned. The record was received by the circuit court on June 5, 2000. On June 16, 2000, the court dismissed the petition. The dismissal order was entered using a form order. The court marked the box indicating that the petition was being dismissed because it was frivolous, but the order did not otherwise explain this conclusion. As far as the appellate record shows, no briefing or argument from the parties was received, either on the merits of the certiorari petition or on whether it was frivolous.

¶3 The court may well have conducted a thorough review of the claims in Bridges' petition, but its analysis is not of record.¹ Because there was no briefing, we cannot assume that the court adopted the reasoning offered by the respondent. On appeal, the respondent argues that Bridges' petition was properly dismissed because the evidence supported the administrative decision. However, the respondent does not address several other claims Bridges made in his petition, including that he was denied the opportunity to present witnesses, that the security director's views were biased because of his own personal involvement in an incident with Bridges, and that the security director lacked jurisdiction to refer Bridges for administrative confinement.

¹ We are aware that, according to motion papers filed in this court by the respondent, a draft memorandum decision was prepared by the circuit court shortly after entry of the dismissal order in this case. However, that document was not signed or entered by the court, and for that reason we concluded in our order of October 26, 2000, that the document would not be appropriate to include in the appellate record.

¶4 We could attempt to review the petition and the record ourselves and analyze the merits of Bridges' petition. As the respondent correctly notes, when deciding the merits of certiorari cases, we review the decision of the agency, not the circuit court, and therefore the absence of circuit court analysis would not necessarily affect our review of the merits. However, if we were to affirm on the merits, we would then review whether the petition was frivolous. For that issue, we must review the circuit court's decision, because only the circuit court made that decision. If we attempt to review the case ourselves, we would be doing so without the benefit of the circuit court's analysis, or any appellate argument from the respondent on some of the issues. In addition, we lack the required factual findings supporting the frivolousness determination. *See Badger Bearing, Inc. v. Drives & Bearings, Inc.*, 111 Wis. 2d 659, 678-80, 331 N.W.2d 847 (Ct. App. 1983).

¶5 Under these circumstances, we conclude that the best course is to reverse and remand for further proceedings in the circuit court. The circuit court will then have an opportunity to state the basis for its conclusions, particularly as to the finding of frivolousness. In addition, we note that the common practice in certiorari actions is to allow the parties to file briefs on the merits of the petition after the record is returned. To decide the petition without briefs may result in reversal on that ground. *See State ex rel. Sahagian v. Young*, 141 Wis. 2d 495, 500-01, 415 N.W.2d 568 (Ct. App. 1987), and *Hoffman v. Economy Preferred Ins. Co.*, 2000 WI App 22, ¶¶10-14, 232 Wis. 2d 53, 606 N.W.2d 590 (due process right is violated when finding of frivolousness is made without party having notice or opportunity to respond). Furthermore, on appeal Bridges has argued that the respondent's return of the record was incomplete. On remand,

Bridges will have an opportunity to move the circuit court for an amendment of the record.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

