

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 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. 00-2547

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. RONALD S. SCHILLING,

PETITIONER-APPELLANT,

V.

**PATRICIA GOODRICH, RUSSEL LEIK AND WILLIAM
SAGAL,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
DAVID T. FLANAGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ronald Schilling appeals from an order denying his motion to have certain Department of Corrections (DOC) officials found in

contempt of court for failing to comply with a prior order of the court. We affirm the order.

¶2 Schilling has been serving a life sentence since 1976 for being party to the crimes of first-degree homicide and armed robbery. In 1989, Schilling was denied transfer to a minimum-security institution based upon administrative code provisions which had been revised in 1988. Schilling sought certiorari review of his security classification on the grounds that application of the revised criteria to him violated the *ex post facto* clause. The circuit court agreed and on July 12, 1990, it issued an order directing prison officials to afford Schilling a prompt review of his security classification without use of the revised criteria. The prison officials failed to timely appeal the decision, and eventually gave Schilling a new security classification hearing based upon the pre-1988 criteria.

¶3 In 1995, this court determined in a separate case that the application of the revised administrative code provisions to persons serving life sentences did not violate the *ex post facto* clause. ***Burrus v. Goodrich***, 194 Wis. 2d 654, 535 N.W.2d 85 (Ct. App. 1995). The prison officials subsequently applied the revised criteria to Schilling in his next security classification review. Schilling moved to have the prison officials found in contempt, but the circuit court determined that they had already substantially complied with the prior order. Schilling appeals that determination, and also argues that the trial judge should have recused himself because he was not impartial.

¶4 We do not address Schilling's assertion that the circuit court judge was biased against him because the record does not show that Schilling asked the judge to recuse himself or otherwise raised the question of bias below. Thus, we

deem the issue waived. *See State v. Hayes*, 167 Wis. 2d 423, 425-26, 481 N.W.2d 699 (Ct. App. 1992).

¶5 We review the circuit court's use of its contempt powers under the erroneous exercise of discretion standard. *State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867 (Ct. App. 1990). Here, the circuit court determined that the scope of the 1990 order was limited to setting aside the specific classification determination appealed from and granting Schilling a new hearing. The circuit court's conclusions that the 1990 order did not extend to all future security classification decisions, and that prison officials did not willfully disregard the order by relying on subsequent case law for subsequent security classification decisions, represented a reasonable application of the relevant law to the facts of record and was not a misuse of discretion.

By the Court.—Order affirmed.

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

