

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 20, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 01-0094

Cir. Ct. No. 00-CV-91

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. MARK J. SANTNER,

PETITIONER-APPELLANT,

V.

**DAVID H. SCHWARTZ, ADMINISTRATOR, DIVISION OF
HEARINGS AND APPEALS, STATE OF WISCONSIN,**

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Jefferson County:
RANDY R. KOSCHNICK, Judge. *Affirmed.*

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

¶1 PER CURIAM. Mark Santner, pro se, appeals from the circuit court's order affirming his probation revocation. Santner argues that his revocation hearing was not timely held, violating WIS. STAT. § 302.335(2)(b)

(1999-2000)¹ and his right to due process. We resolve these issues against Santner. Accordingly, we affirm.

¶2 Santner raises two substantive claims. First, Santner contends that his revocation hearing was not held within the time limits prescribed by WIS. STAT. § 302.335(2)(b), which provides that “[t]he division shall begin a final revocation hearing within 50 calendar days after the person is detained in the county jail, other county facility or the tribal jail.” On its face, however, this statute applies only to probationers being held “in the county jail, other county facility or the tribal jail.” As we have previously explained, “[t]he object of § 302.335 is to regulate the length of time persons are held in county jails pending ... revocation hearings.” *State ex rel. Jones v. Div. of Hearings & Appeals*, 195 Wis. 2d 669, 673, 536 N.W.2d 213 (Ct. App. 1995).² Because Santner was transferred from the county jail to prison after nineteen days and was held in prison pending revocation, the statute did not apply to him.³ Therefore, we reject his argument.

¶3 Santner next contends that his due process rights were violated because too many days elapsed between the time he was taken into custody and the time his revocation hearing was held. Due process requires that revocation

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

² *State ex rel. Jones* was a parole revocation case, but its reasoning applies equally to probation revocation proceedings.

³ Santner was held in the Milwaukee County Jail from July 17, 1999, until August 5, 1999, when he was taken to the Racine Correctional Institution.

hearings be held within a reasonable time. *See id.* at 674.⁴ To determine whether Santner's due process rights were violated, we must consider the length of the delay, the reasons for the delay, and the prejudice to Santner. *See United States ex rel. Sims v. Sielaff*, 563 F.2d 821, 828 (7th Cir. 1977).

¶4 Santner was taken into custody July 17, 1999, but the revocation hearing was not completed until January 25, 2000. Although this is a lengthy period of time, much of the delay was attributable to choices Santner made. Shortly after being taken into custody, Santner accepted an offer for placement in a 120-day alternative-to-revocation program. He was not accepted for that program, but was accepted into another alternative-to-revocation program. Sometime in mid-September, Santner decided not to accept that placement. Because Santner rejected the placement, on September 27, 1999, the Division scheduled a revocation hearing for November 2, 1999. However, Santner requested that the hearing be rescheduled to allow him time to have an attorney appointed by the public defender's office and to prepare his defense.

¶5 The revocation hearing commenced on November 23, 1999, but was continued partway through the hearing to December 14, 1999, to allow Santner and his attorney additional time to prepare. The hearing did not continue on that date because the prison failed to transport Santner. A hearing rescheduled for January 18, 2000, was not held because Santner's attorney had car problems and could not attend. The hearing was finally completed January 25, 2000.

⁴ The due process rights of parolees and probationers are substantially equivalent. *State ex rel. Vanderbeke v. Endicott*, 210 Wis. 2d 502, 513 n.4, 563 N.W.2d 883 (1997).

¶6 As this history shows, many of the delays were attributable to Santner's decision to pursue alternatives to revocation or to Santner's requests for additional time to prepare. Although some of the postponements were the department's fault, in each case where there was a delay, hearings were promptly rescheduled. Because the delays were largely attributable to Santner and he has not made an adequate showing of prejudice, we conclude that the proceedings comported with due process.

By the Court.—Order affirmed.

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

