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DISTRICT IV

August 29, 2024

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
Electronic Notice

Colin Thomas Roth
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Darrick A. Alexander, 158382
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You are hereby notified that the Court has entered the following opinion and order:

2023AP582

State of Wisconsin ex rel. Darrick A. Alexander v. Kevin A. Carr
(L.C. # 2023CV326)

Before Kloppenburg, P.J., Graham, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Darrick Alexander, pro se, appeals a circuit court order dismissing his petition for writ of habeas corpus, as well as an order denying his motion for reconsideration of the dismissal order. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2021-22).¹

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Alexander was reconfined following the revocation of his parole. An administrative law judge (ALJ) entered a revocation order on May 28, 2021, following a hearing. Alexander initiated a timely administrative appeal of the ALJ's revocation order. After a review of the evidence, the administrator of the Division of Hearings and Appeals (DHA) issued a final decision on July 1, 2021, sustaining the ALJ's revocation order.²

Over a year later, in September 2022, Alexander wrote a letter to the Department of Administration, requesting that the DHA again review the decision to revoke his parole. This time, Alexander argued that the ALJ's revocation order was not valid because it was "unsigned."³ The DHA responded in writing that Alexander had already received a final decision on his administrative appeal and could not pursue another appeal.

A few months later, in February 2023, Alexander filed a petition for writ of habeas corpus in the circuit court. The court dismissed the petition for failure to state a claim, explaining that parole revocation decisions must be challenged through certiorari rather than habeas corpus, citing *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 183-84, 572 N.W.2d 505 (Ct. App. 1997). The court further stated that if Alexander's petition were construed as a certiorari petition, the petition was untimely under WIS. STAT. § 893.735(2), which provides that

² The DHA's final decision is not included in the record because Alexander did not make it a part of the record. See *State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986) (it is the appellant's duty to ensure that the record is sufficient to address the issues raised on appeal). However, both parties acknowledge in their briefs that the DHA issued its decision on July 1, 2021.

³ A copy of the May 28, 2021 revocation order was attached to Alexander's petition for writ of habeas corpus filed in the circuit court. A signature block appears on the last page of the order. The administrative law judge who presided over the revocation hearing appears to have indicated her signature with "/s" rather than with an electronic or ink signature.

“[a]n action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues.” Alexander filed a motion for reconsideration of the dismissal order. The court denied the motion for reconsideration, and Alexander initiated this appeal.

We begin our discussion with a general overview of the requirements for obtaining habeas relief. “Habeas corpus is an extraordinary writ that is only available to a petitioner under limited circumstances.” *State ex rel. L’Minggio v. Gamble*, 2003 WI 82, ¶18, 263 Wis. 2d 55, 667 N.W.2d 1. Habeas corpus is available to a petitioner only when: (1) the petitioner is restrained of his or her liberty; (2) the restraint was imposed by a body without jurisdiction or contrary to constitutional protections; and (3) the petitioner has no other adequate remedy available at law. *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771.

Alexander appears to argue that, because the ALJ’s revocation order was “unsigned,” it was “void” and could not have been challenged by filing a petition for a writ of certiorari in the circuit court, so he was entitled to pursue habeas relief instead. Alexander’s argument fails for at least two reasons. First, the purported lack of a signature on the ALJ’s revocation order did not prevent Alexander from filing an administrative appeal of that order with the DHA pursuant to WIS. STAT. § 304.06(3). Second, the ALJ’s revocation order is not the final decision for purposes of certiorari review. The DHA’s decision on appeal, sustaining the ALJ’s revocation order, is the final decision for purposes of certiorari review. *See State ex rel. Saffold v. Schwarz*, 2001 WI App 56, ¶3 n.2, 241 Wis. 2d 253, 625 N.W.2d 333 (certiorari deadline is calculated from the date of the administrative appeal decision, not the parole revocation order). Alexander does not assert that the DHA’s decision in the administrative appeal was unsigned,

nor does he show that certiorari review of the DHA's decision was unavailable or inadequate as a remedy.

Certiorari review was, in fact, an available and adequate remedy, albeit one that Alexander did not pursue. When Alexander lost his administrative appeal, he had a right to obtain judicial review of the DHA's final decision by filing a petition for certiorari review in the circuit court within forty-five days. *See* WIS. STAT. § 893.735(2). In a petition for certiorari review, Alexander could have challenged the adequacy of the ALJ's revocation order and its alleged lack of signature. However, Alexander did not seek certiorari review in the court within the statutory time frame. The fact that Alexander failed to seek certiorari review does not mean that certiorari was an inadequate remedy.

To the extent that Alexander argues the circuit court erred when it construed his petition for a writ of habeas corpus as a petition for certiorari review, and that doing so deprived him of the right to be heard, we reject this argument. It is well established that “[r]eview of parole and probation revocation decisions is ‘by certiorari directed to the court of conviction.’” *Reddin*, 215 Wis. 2d at 183 (citation omitted). Habeas corpus proceedings are not available to challenge an administrative revocation decision. *See id.* Courts are required to liberally construe mislabeled pleadings. *State ex rel. Purifoy v. Malone*, 2002 WI App 151, ¶8, 256 Wis. 2d 98, 648 N.W.2d 1. The record reflects that the court did so here. The court considered whether Alexander had stated a claim for habeas relief and, when it concluded that he had not, also considered whether Alexander would be entitled to relief if his petition were construed as a petition for writ of certiorari. The court ultimately concluded that Alexander was not entitled to relief because the 45-day time frame for pursuing certiorari review under WIS. STAT. § 893.735(2) had passed. Having reviewed the record independently, we reach the same conclusion as the circuit court.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals