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**DISTRICT IV**

November 14, 2024

*To:*

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You are hereby notified that the Court has entered the following opinion and order:

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2023AP370

Delmarco M. Turner v. Robert J. Kaiser (L.C. # 2023CV318)

Before Kloppenburg, P.J., Nashold, and Taylor, 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).**

Delmarco Turner, pro se, appeals a circuit court order dismissing his petition for a writ of mandamus seeking to compel the Dane County District Attorney's (DA's) Office to disclose material from a 2008 criminal case in which Turner was the defendant. Based on our review of



the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).<sup>1</sup> We affirm.

In his petition, Turner alleged that his attorney in his 2008 criminal case engaged in written exchanges with the DA’s Office and that counsel abandoned certain defense strategies based on this correspondence. Turner also alleged that his attorney never provided him with copies of these written exchanges. He sought to compel the DA’s Office to disclose the written exchanges under WIS. STAT. § 19.35, part of the Wisconsin Public Records Law.

The circuit court dismissed Turner’s petition. The court concluded that Turner failed to state a claim under the Wisconsin Public Records Law. The court relied on a common law exception under *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991), and *Nichols v. Bennett*, 199 Wis. 2d 268, 544 N.W.2d 428 (1996), that protects district attorney files from public inspection.

On appeal, Turner argues that this common law exception does not apply to the written exchanges between his attorney and the DA’s Office. We disagree. As our supreme court explained in *Foust*, this exception “protects the district attorney’s files from being open to public inspection,” *Foust*, 165 Wis. 2d at 433-34, and the exception applies even to “a defendant wanting to see [the defendant’s] own file,” *id.* at 435.

In *Nichols*, our supreme court clarified that “[a] prosecutor cannot shield documents subject to the [public] records law simply by placing them into a ‘prosecutorial file.’” *Nichols*, 199 Wis. 2d at 274. However, the court in *Nichols* also “reaffirm[ed] that documents integral to

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



the criminal investigation and prosecution process are protected ‘from being open to public inspection.’” *Id.* at 275 n.4 (quoting *Foust*, 165 Wis. 2d at 434). Here, based on Turner’s petition allegations, the written exchanges between his attorney and the DA’s Office were integral to the criminal prosecution process.

Turner appears to argue that the common law exception under *Foust* and *Nichols* applies only to ongoing investigations and prosecutions and not to prosecution files in closed criminal cases. However, the exception is not limited in this manner. The decision in *Foust* makes clear that the exception encompasses closed cases and that the records at issue in *Foust* were in a closed prosecution file. See *Foust*, 165 Wis. 2d at 430-31 & n.2 (addressing “whether closed prosecutorial files are exempt from public access under [the public] records law” and noting that “[t]he file has been closed”).

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to Wis. STAT. RULE 809.21(1).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*