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**DISTRICT IV**

July 10, 2025

To:

Hon. Jeffrey S. Kuglitsch  
Circuit Court Judge  
Electronic Notice

Jacob J. Wittwer  
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Amanda Nelson  
Clerk of Circuit Court  
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Earl Dewayne Phiffer 366323  
Kettle Moraine Correctional Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

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

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2024AP1159-CR	State of Wisconsin v. Earl Dewayne Phiffer
2024AP1160-CR	(L.C. ## 2002CF3370, 2003CF133)

Before Kloppenburg, P.J., Blanchard, 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).**

In these consolidated appeals, Earl Phiffer appeals circuit court orders denying his request to waive a transcript fee. 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) (2023-24).<sup>1</sup> We affirm.

In September 2023, Phiffer filed a motion in two circuit court cases requesting that the court correct his sentence structure. Phiffer alleged that the department of corrections had

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

miscalculated his period of supervision. The court held a hearing on the motion, and the court then entered an order denying the motion for reasons stated at the hearing. Phiffer appealed and filed a motion requesting a waiver of the court reporter's fee to produce a transcript of the hearing. The court denied the fee waiver request, and Phiffer now appeals the denial of that request.<sup>2</sup>

In order to put the parties' arguments in context, we first briefly summarize certain requirements for a fee waiver in the circuit court. A litigant seeking a fee waiver generally must provide an affidavit of indigency "in the form prescribed by the judicial conference." WIS. STAT. § 814.29(1)(b) and (1m)b.1. If the litigant is a "prisoner" under Wisconsin's Prisoner Litigation Reform Act, the litigant must also satisfy additional requirements. *See generally* WIS. STAT. §§ 814.29(1) and (1m) and 801.02(7); *State ex rel. Stinson v. Morgan*, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999). The term "prisoner" in this context has a technical meaning that excludes an incarcerated person who is "bringing an action seeking relief from a judgment of conviction or a sentence." *See* §§ 814.29(1m) and 801.02(7)(a)2.c.

Here, it appears that when the circuit court denied Phiffer's request for a fee waiver the court determined that Phiffer is a prisoner for purposes of his fee waiver request. Each of the court's orders indicates that the court was denying Phiffer's request not only because Phiffer

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<sup>2</sup> Phiffer's underlying appeals from the circuit court's order denying his motion to correct his sentence structure are docketed as Appeal Nos. 2023AP2328-CR and 2023AP2329-CR. By separate order of this court dated June 19, 2024, we held the underlying appeals in abeyance pending our resolution of Phiffer's transcript fee waiver appeals. We remind the parties that, with our resolution of the transcript fee waiver appeals here, the underlying Appeal Nos. 2023AP2328-CR and 2023AP2329-CR will now proceed.

failed to provide a proper affidavit of indigency, but also because he failed to satisfy additional requirements that apply to prisoners.

Phiffer does not address whether he is a prisoner for fee waiver purposes. He argues instead that he is indigent and is therefore entitled to a waiver. He also argues that the circuit court's denial of his fee waiver request violates his rights to due process and equal protection.

The State contends that the circuit court appears to have properly determined that Phiffer is a prisoner for purposes of a fee waiver because, under case law, Phiffer's underlying challenge to the calculation of his sentence is not considered an "an action seeking relief from a judgment of conviction or a sentence" within the meaning of the fee waiver statutes. Alternatively, the State argues that if Phiffer is not a prisoner, the court's denial of his fee waiver request should still be affirmed because Phiffer did not submit a proper affidavit of indigency as required for prisoner and non-prisoner litigants alike.

We agree with the State's alternative argument, and we therefore do not decide whether the circuit court properly concluded that Phiffer is a prisoner. Even if Phiffer is not a prisoner, the fact remains that he did not satisfy the statutory requirement for a fee waiver because he did not submit the required affidavit of indigency, at least not according to the record before this court.

Moreover, Phiffer has not filed a reply brief, and he has therefore effectively conceded the State's arguments. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (concluding that appellant's failure to reply to an argument in respondent's brief conceded the argument). Phiffer's concession of the State's arguments is a second, independent basis on which we affirm the circuit court.

Finally, we note that Phiffer mistakenly relies on *State v. Jacobus*, 167 Wis. 2d 230, 481 N.W.2d 642 (Ct. App. 1992), to argue that he is entitled to a transcript at no charge. The relevant discussion in *Jacobus* applies to transcripts of hearings in which the circuit court denies a fee waiver request based on the court's determination that a litigant is not indigent. *See id.* at 234-35. In that situation, a transcript is provided at no initial charge to the litigant because, without the transcript, we are unable to review the court's determination of non-indigency. *Id.* at 235. Here, Phiffer is not seeking to waive the fee for a transcript of a hearing addressing the issue of indigency. Rather, he is seeking to waive the fee for a transcript of the hearing on his motion to correct his sentence structure, and we do not need the transcript of that hearing to review whether the court properly denied his request to waive that fee.

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*