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**DISTRICT II**

October 8, 2025

*To:*

Hon. Bryan D. Keberlein  
Circuit Court Judge  
Electronic Notice

Colin Thomas Roth  
Electronic Notice

Desiree Bongers  
Clerk of Circuit Court  
Winnebago County Courthouse  
Electronic Notice

Kevin R. Dunay, #666057  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2023AP521

Kevin R. Dunay v. Sarah R. Feltes (L.C. #2022CV578)

Before Neubauer, P.J., Gundrum, and Grogan, 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).**

Kevin R. Dunay, pro se, appeals an order dismissing his mandamus petition. He argues the circuit court erred by denying mandamus relief on his assertions that the respondent should be compelled to release certain records that were denied following an open records request, and to allow Dunay a minimum of 12 to 14 hours per week of time in the institution law library. Based on the briefs and 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 summarily affirm the order.

Dunay is an inmate at Oshkosh Correctional Institution (“OCI”). He suspected that OCI officials were tampering with his legal mail. On April 28, 2021, Dunay filed an open records request in which he asked OCI for information regarding mail monitoring, the duplication of legal mail, and communications concerning his legal mail, among other things. Corrections Program Supervisor Sarah Feltes, the deputy records custodian, sent a response on July 27, 2021, that purported to be all responsive records, including communications with law enforcement and a mail read log.

Dunay believed the records response was incomplete. He filed an inmate complaint, but was unsatisfied with the result of that process. In December 2021, he attempted to file a petition for a writ of mandamus compelling the disclosure communications sent to law enforcement regarding his legal mail. The petition was unaccompanied by a filing fee, and Dunay was told to resubmit the petition with the fee or a waiver form.<sup>2</sup> Dunay contacted the clerk of circuit court’s office several more times, but he did not submit the fee or waiver form and it does not appear the clerk responded. In January 2022, Dunay notified Feltes that he believed the response was incomplete, to which Feltes responded on February 2, 2022, that all responsive records had been produced.

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

<sup>2</sup> It appears Dunay was erroneously informed by a member of the clerk’s staff that a petition for a writ of mandamus had no filing fee associated with it.

Dunay then filed the present petition for a writ of mandamus, which is dated July 22, 2022. The petition sought two forms of relief: (1) an order compelling Feltes to fully comply with Dunay’s public records request; and (2) an order compelling Feltes, as director of the OCI law library, to provide Dunay with 12 to 14 hours of library time or more per week, the amount of time Dunay represented was necessary to ensure his “constitutionally adequate” access to the law library. The circuit court denied the petition in an oral ruling following briefing and argument, concluding that the petition was untimely filed as to the records response and that Dunay’s law library claim was “clearly outside” the scope of mandamus. Dunay now appeals.

A writ of mandamus is “an extraordinary writ issued in the discretion of the circuit court to compel compliance with a plain legal duty.” *Wisconsin Elections Comm’n v. LeMahieu*, 2025 WI 4, ¶29, 414 Wis. 2d 571, 16 N.W.2d 469 (citation omitted). For the writ to issue, the petitioner must demonstrate: (1) a clear legal right; (2) a positive and plain duty; (3) substantial damages arising from the duty’s nonperformance; and (4) no other adequate remedy at law. *Id.*

We review the denial of a writ of mandamus for an erroneous exercise of discretion. Here, Dunay argues only that the circuit court committed errors of law. “The circuit court erroneously exercises its discretion when it grants or denies a writ of mandamus based on an incorrect interpretation of the law.” *Id.*, ¶12. To the extent the resolution of the petition requires statutory interpretation, we review the meaning of a statute de novo. *Id.*, ¶13.

We perceive no error in the denial of Dunay’s petition. Insofar as the petition pertains to his records request, it was untimely. WISCONSIN STAT. § 19.37(1m) limits the time for an incarcerated person to bring a mandamus action challenging the denial of a request for records to “90 days after the date that the request is denied by the authority having custody of the record or

part of the record.” Even if we view the Record most favorably to Dunay and construe the February 2, 2022 letter from Feltes as a new “denial,” and construe his action as commenced on July 22, 2022, Dunay’s petition was late by more than one month.<sup>3</sup> The circuit court appropriately exercised its discretion when it determined that Dunay’s action was filed “well outside of the 90 days that would have been required, even with the most generous of timelines.”<sup>4</sup>

The circuit court also appropriately exercised its discretion by determining that Dunay’s mandamus claim regarding the OCI law library was not viable.<sup>5</sup> Dunay has not demonstrated that Feltes has a “positive and plain” legal duty to provide his desired amount of law library time. WISCONSIN ADMIN. CODE § DOC 309.155(3) (through Aug. 2025) requires only that OCI “maintain a law library and make legal materials available to inmates at reasonable times and for reasonable periods.” *Id.* This is not the type of “clear and unequivocal” duty that gives rise to mandamus relief. *See Law Enf’t Standards Bd. v. Village of Lyndon Station*, 101 Wis. 2d 472,

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<sup>3</sup> Dunay, for his part, fails to establish that the February 2, 2022 letter from Feltes should be construed as a denial. It seems clear that the denial for any other responsive records occurred on July 27, 2021, making even Dunay’s attempted commencement of a mandamus action in December 2021, untimely. In any event, for the reasons set forth in the State’s brief, we agree that Dunay’s arguments attempting to circumvent the time limit established by WIS. STAT. § 19.37 are unpersuasive.

<sup>4</sup> Dunay’s reply brief suggests that the merits of his petition must be reached “[r]egardless of time constraints for filing the mandamus for public records request[s].” For the reasons set forth in the State’s brief, we agree that Dunay’s arguments attempting to circumvent the time limit established by WIS. STAT. § 19.37 are unpersuasive. Dunay’s attempts to recast his petition for a writ of mandamus as something other than a request for records are belied by the relief he sought in his filing, which was “copies of all e-mails and scanned/copied attachments of his legal mail sent to law enforcement (or any other State agency including the Attorney General’s Office) by any OCI staff between 10/31/2018 and 07/22/2022.”

<sup>5</sup> Dunay faults the circuit court for not providing a sufficient explanation for its rejection of this mandamus claim. A reviewing court, however, may search the record for reasons to sustain the court’s exercise of discretion. *State v. LaCount*, 2008 WI 59, ¶15, 310 Wis. 2d 85, 750 N.W.2d 780.

494, 305 N.W.2d 89 (1981). The legal authorities Dunay cites as the source of the duty contemplate an exercise of discretion, and therefore cannot supply the basis for a writ of mandamus to issue. *See Vretenar v. Hebron*, 144 Wis. 2d 655, 662-63, 424 N.W.2d 714 (1988).

Upon the foregoing reasons,

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.

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