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DISTRICT II

April 8, 2026

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Karla Z. Keckhaver
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Dino McQuay, #181009
Oshkosh Correctional Institution
P.O. Box 3310
Oshkosh, WI 54903-3310

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P.O. Box 3310
Oshkosh, WI 54903-3310

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

2024AP1584

Dino McQuay v. Brian Hayes (L.C. #2024CV327)

Before Gundrum, Grogan, and Lazar, 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).

Dino McQuay, pro se, appeals from an order of the circuit court dismissing his petition for certiorari review as untimely. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ For the following reasons, we affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

In 2023, McQuay’s probation was revoked after a hearing before an administrative law judge (ALJ). McQuay appealed the ALJ’s decision to Administrator Hayes of the Division of Hearings and Appeals (DHA). McQuay mailed the appeal on December 13, 2023, and the DHA received it on December 15, 2023. Hayes dismissed McQuay’s appeal in a decision dated January 10, 2024, concluding it was filed outside the ten-working-day period required by WIS. ADMIN. CODE § HA 2.05(8) (through Feb. 2024).

On March 13, 2024, McQuay filed a petition for writ of certiorari with the circuit court. Although McQuay’s signature on the petition is dated February 28, 2024, he filed an affidavit dated February 26, 2024, attesting that he placed the petition and other required documents in the prison mailbox on that date.² Hayes moved to dismiss the certiorari action because, inter alia, McQuay did not file the petition within the 45-day limitation period under WIS. STAT. § 893.735. The court granted Hayes’s motion to dismiss, finding McQuay “missed the 45-day deadline” to file for certiorari review. The court then issued a written order dismissing the action with prejudice. McQuay appeals.

“An 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.” WIS. STAT. § 893.735(2). “Failure to timely file a petition for certiorari ... may result in dismissal.” *State ex rel. Johnson v. Litscher*, 2001 WI App 47, ¶5, 241 Wis. 2d 407, 625 N.W.2d 887. Our review of the dismissal is de novo. *See id.*, ¶4. Issues of statutory interpretation are also

² This discrepancy in dates is not relevant to our decision.

reviewed de novo. *State ex rel. Steldt v. McCaughtry*, 2000 WI App 176, ¶11, 238 Wis. 2d 393, 617 N.W.2d 201.

McQuay’s petition for certiorari review was untimely. Hayes’s decision, from which McQuay sought review, was issued on January 10, 2024. Forty-five days from that date was February 24, 2024. However, because February 24, 2024, fell on a Saturday, the deadline moved to the following Monday, February 26, 2024. *See* WIS. STAT. § 801.15(1)(b). McQuay’s petition, however, was not filed until the court received the applicable filing fee on March 13, beyond the 45-day time limit.³ *See State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶9, 239 Wis. 2d 327, 620 N.W.2d 409 (“In Wisconsin, ... civil actions are not commenced until the applicable filing fee is paid unless payment is waived by the court for cause shown.” (citation omitted)).

McQuay argues the 45-day limitations period did not begin to run until January 16, 2024, the date he claims he received actual notice of Hayes’s decision. Under WIS. STAT. § 893.735(2), “the court may extend the period [for seeking certiorari review] by as many days as the prisoner proves have elapsed between the decision or disposition and the prisoner’s actual notice of the decision or disposition.” However, even if McQuay did not receive actual notice of

³ The documents McQuay mailed on February 26 or 28 did not include a request for a fee waiver or the other documents necessary to receive a waiver. *See State ex rel. Locklear v. Schwarz*, 2001 WI App 74, ¶22, 242 Wis. 2d 327, 629 N.W.2d 30 (listing documents an indigent prisoner must submit “[i]n order to obtain waiver of prepayment of costs and fees”). Thus, the 45-day time limit was tolled only until the clerk’s office received the documents, not until the action was filed. *See State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶14, 239 Wis. 2d 327, 620 N.W.2d 409 (concluding “when a prison inmate places a certiorari petition in the institution’s mailbox for forwarding to the circuit court, the forty-five-day time limit in WIS. STAT. § 897.735(2) is tolled” “however, other defects in the filing, such as the failure to pay the required fee, or establish a right to waiver of the fee, may nonetheless result in its rejection by the court”).

Hayes's decision until January 16, 2024, his petition was still untimely, as 45 days from January 16, 2024, is March 1, 2024, and McQuay did not file until March 13. The circuit court properly concluded McQuay's petition for writ of certiorari was untimely under § 893.735(2).

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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