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DISTRICT IV

November 27, 2024

To:

Hon. Frank D. Remington
Circuit Court Judge
Electronic Notice

Brian Keenan
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Gabriel Diaz 485078
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2024AP426

State of Wisconsin ex rel. Gabriel Diaz v. Daniel M. Cromwell
(L.C. # 2024CV272)

Before Blanchard, 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).

Gabriel Diaz, pro se, appeals a circuit court order dismissing his petition for a writ of certiorari. The court dismissed Diaz's petition on the ground that the petition is frivolous. Based upon our review of the briefing and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We reverse and remand for further proceedings.

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

Diaz filed a petition for a writ of certiorari against the department of corrections secretary and prison warden relating to prison disciplinary proceedings. Without requiring a response, the circuit court entered an order dismissing the petition on February 2, 2024.

The dismissal order is a form order, and the court checked a box indicating that the ground for dismissal is that the petition “is frivolous.” The order contains no further explanation and provides no other grounds for dismissal.

Diaz appealed and filed an appellant’s brief. The secretary and warden responded with a one-sentence letter stating they “will not be filing a response brief in this appeal.”

We interpret the respondents’ letter to mean that they have no objection to reversal of the circuit court’s February 2, 2024 order because Diaz’s petition has not been demonstrated to be frivolous. Based on this concession, we reverse the order and remand for further proceedings.

Therefore,

IT IS ORDERED that the circuit court’s order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1) and that the cause is remanded for further proceedings consistent with this opinion.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals