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January 7, 2021

To:

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You are hereby notified that the Court, by its Clerk and the Commissioners, has entered the following order:

No. 2020AP8-W Shaw v. Reiff L.C. #1982CF266

On January 2, 2020, petitioner, Terrance J. Shaw, pro se, filed a document captioned "writ of mandamus against Clerk Sheila T. Reiff." We dismiss the writ petition for the reasons stated in this order.

As background, Mr. Shaw has repeatedly sought to challenge his 1982 conviction and sentence for first-degree intentional homicide and first-degree sexual assault by use of a dangerous weapon, citing a 2014 diagnosis that he suffered post-traumatic stress disorder and a traumatic brain injury related to his military service in Vietnam. See, e.g., Appeal No. 2010AP844-CR (claiming PTSD diagnosis was a new factor warranting sentence modification); Appeal No.

2016AP314 (claiming PTSD diagnosis constituted newly discovered evidence entitling him to a new trial); Appeal No. 2018AP720 (dismissing for lack of jurisdiction Shaw's appeal from an order denying his motion for reconsideration of an order rejecting his postconviction claim that his PTSD diagnosis constitutes newly discovered evidence warranting a new trial, at which he could present the diagnosis as a part of a not guilty by reason of mental disease or defect defense, on the grounds that it was barred by State v. Escalona-Naranjo, 185 Wis. 2d 168, 184–86, 517 N.W.2d 157 (1994)).

The document Mr. Shaw filed in this court in January of 2020 asks this court to direct the Clerk to reinstate a petition for writ of habeas corpus that he filed in the court of appeals on September 26, 2019, Shaw v. Kemper, Appeal No. 2019AP1829. In that petition, Mr. Shaw argued that at his 1982 sentencing proceeding, his attorney rendered ineffective assistance by failing to offer sufficient mitigating evidence of traumatic experiences suffered by Mr. Shaw in childhood and during his military service.

By order dated October 1, 2019, Shaw was advised that he needed to pay the filing fee in Appeal No. 2019AP1829, or seek a fee waiver within 10 days of the date of the court's order. The fee or requisite fee waiver forms were due on October 16, 2020. On October 17, 2020, Shaw filed indigency forms. Meanwhile, Mr. Shaw also sent a series of letters to the court. He objected to the caption. He sought to direct his petition for writ of habeas corpus to an individual judge, the Honorable Joanne Kloppenberg, citing Wis. Stat. Ch. 782. He appeared to believe that if he filed a petition for writ of habeas corpus with an individual judge, rather than with the court as a whole, he would not be required to pay a filing fee. He also filed a separate pro se petition for writ of mandamus asking the supreme court to review the Clerk and court's handling of his then still pending writ petition in Shaw v. Kemper, 2019AP1829. See Appeal No. 2019AP1881. On November 8, 2019 this court denied the petition for writ of mandamus. Mr. Shaw moved for reconsideration. His motion for reconsideration was denied by order dated November 14, 2019. See Appeal No. 2019AP1881.

Meanwhile, by order dated November 20, 2019, Mr. Shaw's petition for writ of habeas corpus in the court of appeals, Appeal No. 2019AP1829, was dismissed for failure to timely pay the filing fee or timely submit a fully executed petition for a waiver of that filing fee.

On December 10, 2019, Mr. Shaw sent another letter addressed specifically to Judge Kloppenberg, reiterating his objections to the Clerk's handling of the matter, objecting to the dismissal, and claiming he was not required to pay a filing fee. The court of appeals took no action on that letter.

This summary brings us to the pending "writ of mandamus against Clerk Sheila T. Reiff" filed on January 2, 2020. In this filing, Mr. Shaw asked this court to order the Clerk to reinstate the petition for writ of habeas corpus in Appeal No. 2019AP1829, that was dismissed by the court of appeals in November 2019. The matter was delayed pending completion and processing of documents relating to payment of the filing fee.

A petition for writ of mandamus filed in this court was not a proper procedural mechanism for seeking review of the court of appeals' November 2019 decision dismissing his underlying petition for writ of habeas corpus. Rather, Mr. Shaw should have filed a petition for review of the court of appeals' November 20, 2019 order. Indeed, in the November 8, 2019 order denying his separate, pro se petition for writ of mandamus in Appeal No. 2019AP1881 (in which Mr. Shaw prematurely sought review of the court's handling of the then still pending writ petition in Shaw v. Kemper, 2019AP1829), Mr. Shaw was advised that a petition for review was the proper procedure. However, had we construed Mr. Shaw's January 2, 2020 petition for writ of mandamus as a petition for review it would have been dismissed as untimely. The 30-day period in which to file a petition for review may not be enlarged. First Wisconsin National Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).

Accordingly, we dismiss Mr. Shaw's "writ of mandamus." We note that this order does not address the merits of Mr. Shaw's claims presented to this court or those raised in the court of appeals.

We note that Mr. Shaw states that he mailed a check to the Clerk's Office for payment of the filing fee in this matter in July of 2020. However, no payment was applied by the Clerk's Office against the filing fee in this case. Consequently, the filing fee in this case has not been paid and the filing fee for invoice 19513 remains outstanding. As a one-time courtesy, the court will not hold Mr. Shaw financially liable for the filing fee in this matter and the Clerk's Office is instructed to void invoice number 19513 for the amount of $195 and to provide a copy of the voided invoice to Mr. Shaw for his records. Therefore,

IT IS ORDERED that the January 2, 2020 "writ of mandamus against Clerk Sheila T. Reiff" is dismissed; and

IT IS FURTHER ORDERED that the Clerk of Supreme Court and Court of Appeals is instructed to void invoice number 19513 for the amount of $195 and to provide a copy of the voided invoice to Mr. Shaw for his records.

Sheila T. Reiff
Clerk of Supreme Court