



## OFFICE OF THE CLERK

**Supreme Court of Wisconsin**

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May 13, 2021

**To:**

Hon. Beau Liegeois  
Circuit Court Judge  
P.O. Box 23600  
Green Bay, WI 54305-3600

John VanderLeest  
Clerk of Circuit Court  
Brown County Courthouse  
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Wendy W. Lemkuil  
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Mitchel Jay Killinger  
Brown County Jail  
3030 Curry Ln.  
Green Bay, WI 54301

George S. Pappas Jr.  
1345 W. Mason St., Ste. 200  
Green Bay, WI 54303-2072

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

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No. 2021AP360-CRLV    State v. Killinger L.C. #s 2020CF1162 and 2020CF1315

Defendant-petitioner-petitioner, Michael Jay Killinger, seeks to review the court of appeals' decision of March 4, 2021, which it declined to reconsider by order of March 23, 2021, making Mr. Killinger's petition for review due April 22, 2021. Wis. Stat. § 808.10(2). A petition for review was filed on April 26, 2021—received, according to the clerk of courts, by hand delivery. By order of May 3, 2021, this court dismissed the petition as untimely.

On May 10, 2021, Mr. Killinger filed a motion titled, "Motion to Vacate and For Enlargement of Time Limits." In this motion, Mr. Killinger "submit[s] by reference the certificate of mailing in my letter to the clerk of courts which I signed." In a letter to the clerk of courts dated April 21, 2021 (but containing a jail "Grievance Summary Report" dated April 22, 2021), Mr. Killinger stated: "My actual petition for review I certify was provided for mailing to Fed-Ex on

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04/13/2021 as the jail refuses to make copies of handwritten documents. The Supreme Court's 10 copies should arrive in a separate envelope." This statement, which again appears in Mr. Killinger's letter dated April 21, 2021, is inconsistent with his statement in his motion that he "provided [his] petition for review to jail staff for mailing on April 15<sup>th</sup>." Both of these statements are inconsistent with the date that Mr. Killinger provided in the certification section of the petition for review itself: May 15, 2021—an obviously incorrect date.

As best as we can tell from the documentation before us, it appears that Mr. Killinger placed his petition in the institution's mailbox for forwarding to Federal Express before the petition for review deadline lapsed. But that alone does not make his petition for review timely. Application of the mailbox tolling rule is conditioned on the inmate meeting certain conditions before the expiration of the filing deadline, including properly addressing the filing to the correct court filing address, not to a third party service for copying and/or delivery. See State ex rel. Kelley v. State, 2003 WI App 81, 261 Wis. 2d 803, 661 N.W.2d 854.

Accordingly,

IT IS ORDERED that the "Motion to Vacate and For Enlargement of Time Limits" is denied. Mr. Killinger has not provided evidence that he placed his petition for review, properly addressed to the clerk of this court, in the institution's mailbox by the April 22, 2021 deadline for filing a petition for review. If Mr. Killinger can present proof by affidavit or another evidentiary submission that he did so, he is directed to provide such proof by May 25, 2021.

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Sheila T. Reiff  
Clerk of Supreme Court