



OFFICE OF THE CLERK
Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

FILED
03-06-2025
CLERK OF WISCONSIN
COURT OF APPEALS

March 6, 2025

To:

Hon. Mark J. McGinnis
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

John Blimling
Electronic Notice

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

Melinda J. Tempelis
320 S. Walnut Street
Appleton, WI 54911

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

No. 2021AP1513-W Dunay v. Eplett, L.C.#2015CF470

On January 30, 2025, Kevin R. Dunay, pro se, filed a petition for review of the court of appeals' October 23, 2024 decision denying his petition for a writ of habeas corpus under State v. Knight, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). Prior to filing his petition for review, Mr. Dunay filed two motions for reconsideration of the court of appeals' October 23, 2024 decision—one on November 15, 2024, which the court of appeals denied by order of December 9, 2024, and the other on December 19, 2024, which the court of appeals denied by order of December 26, 2024, noting, among other things, that “our appellate rules do not contemplate the filing of successive reconsideration motions.”

A petition for review must be filed “within 30 days of the date of the decision of the court of appeals.” See Wis. Stat. § 808.10(1); see also 809.62(1m). There can be only one “decision” in a court of appeals case, and that is one that finally disposes of the case in the court of appeals via a written opinion containing a summary of the reasons for the decision. In Interest of A.R., 85 Wis. 2d 444, 446, 270 N.W.2d 581 (1978). The court of appeals' October 23, 2024 decision denying Mr. Dunay's habeas petition is the reviewable appellate decision in this case.

Page 2

March 6, 2025

No. 2021AP1513-W

Dunay v. Eplett, L.C.#2015CF470

The 30-day deadline to file a petition for review is tolled by the timely filing of a motion for reconsideration in the court of appeals. See Wis. Stat. § 808.10(2). More specifically, a timely filed motion for reconsideration causes the 30-day deadline to file a petition for review to start on the date the court of appeals determines the motion for reconsideration by filing an order denying the motion for reconsideration or an amended decision. See id. A motion for reconsideration is timely if it is filed within 20 days after the date of the court of appeals' decision. See id.; see also § (Rule) 809.24(1).

Assuming application of the prison mailbox rule, Mr. Dunay's first reconsideration motion, which he purported to deliver to prison authorities for mailing on November 12, 2024, was timely because it was filed within 20 days after the court of appeals' October 23, 2024 decision. See State ex rel. Nichols v. Litscher, 2001 WI 119 ¶1, 247 Wis. 2d 1013, 635 N.W.2d 292 (holding that, for certain court filings, the filing deadline is tolled on the date a pro se prisoner delivers a filing to the proper prison authorities for mailing). Pursuant to Wis. Stat. § 808.10(2), the petition for review deadline was tolled until 30 days after the court of appeals' December 9, 2024 order denying that reconsideration motion; i.e., until January 8, 2025.

Mr. Dunay filed his second motion for reconsideration on December 19, 2024, and he appears to have delivered it to prison authorities for mailing on December 11, 2024— well beyond 20 days after the court of appeals' October 23, 2024 decision. It therefore did not toll the petition for review deadline. See Wis. Stat. § 808.10(2).

Mr. Dunay filed his petition for review on January 30, 2025, and he purported to have delivered it to prison authorities for mailing on January 25, 2025— well after the January 8, 2025 deadline. Accordingly,

IT IS ORDERED that the petition for review is dismissed as untimely, without costs; and

IT IS FURTHER ORDERED that Mr. Dunay's "Motion Seeking Habeas Corpus Relief Under Supreme Court's Supervisory Authority to Take Jurisdiction Pursuant to Wis. Stat. § 809.71," filed March 5, 2025, is dismissed. Because Mr. Dunay failed to file his petition for review before the 30-day statutory deadline expired, this court has no jurisdiction to consider either his petition for review or his accompanying motion. See First Wisconsin National Bank of Madison v. Nicholaou, 87 Wis. 2d 360, 274 N.W.2d 704 (1979).

Samuel A. Christensen
Clerk of Supreme Court