

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 3, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3394

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**State of Wisconsin ex rel.
JAMES L. ALLEN,**

Petitioner-Appellant,

v.

**DAVID H. SCHWARTZ, ADMINISTRATOR,
WISCONSIN DEPARTMENT OF CORRECTIONS,**

Defendant-Respondent.

APPEAL from an order of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Eich, C.J., Vergeront, J., and Robert D. Sundby, Reserve
Judge.

PER CURIAM. James L. Allen appeals from an order dismissing his certiorari petition for failure to file within six months. For the reasons set forth below, we affirm.

The parties agree that Allen's probation was effectively revoked on November 8, 1993. The parties also agree that Allen's first proper¹ filing of an appeal of that decision took place on May 18, 1994. Allen himself concedes that the petition was thus filed "outside the time limit." Certiorari actions are barred when the action complained of occurred more than six months before the filing. *State ex rel. Enk v. Mentkowski*, 76 Wis.2d 565, 575, 252 N.W.2d 28, 32 (1977) (citing *Firemen's Annuity and Benefit Fund v. Krueger*, 24 Wis.2d 200, 128 N.W.2d 670 (1964)).

Allen nevertheless requests that we find his delay "excusable." We decline to do so for two reasons. First, Allen acknowledges that he was informed of the proper procedure for appealing. Second, the petition he filed on May 18, 1994, was improperly captioned, occasioning further delay until the proper party was served.

In light of this disposition, we need not address the further arguments of the parties concerning when the proper party was served and whether the circuit court was sufficiently liberal construing Allen's misfiled petition. We also decline to address whether this court should construe this petition at this late date as one for habeas corpus because Allen has not alleged he filed any habeas corpus petition before a trial court. Nor need we address any other issue raised by Allen. *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Allen alleges that he filed a petition on May 5, 1994, but the clerk of the circuit court rejected the petition for failure to contain a proper code. Allen does not, however, allege that the clerk erred in rejecting this first petition.