

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 20, 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. 95-3604

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**STATE OF WISCONSIN ex rel.
CLARENCE 2X PRICE,**

Petitioner-Appellant,

v.

KEN MORGAN,

Respondent-Respondent.

APPEAL from an order of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

PER CURIAM. Clarence 2X Price has appealed from an order denying his petition for a writ of habeas corpus. In the petition, he alleged that he is illegally detained as a result of a disciplinary committee hearing held on January 27, 1993, at the Abode Correctional Center in Milwaukee. He alleged that exculpatory information submitted to the superintendent of the Abode Correctional Center one day before the disciplinary committee hearing was withheld from him and the disciplinary committee, resulting in a committee finding that he was guilty of using intoxicants and disobeying orders. The

information consisted of a letter from a customer of the Octopus Car Wash where Price was employed indicating that on the day Price received the conduct report, the customer brought the car wash workers a rum cake, which contained alcohol.

Price alleges that based on the disciplinary committee's findings, he was sentenced to eight days of adjustment segregation, lost five days of good time, had his security rating changed from minimum to medium, and was denied parole. We affirm the trial court's order denying the petition.

The State argues that habeas corpus was not a remedy properly available to Price in this case. We agree with the State that Price cannot challenge the increase in his security status from minimum to medium security by way of a petition for a writ of habeas corpus. *See State ex rel. Richards v. Leik*, 175 Wis.2d 446, 454, 499 N.W.2d 276, 279 (Ct. App. 1993). Price himself acknowledges this fact in his brief.

The State also argues that Price's petition was properly denied because he failed to exhaust his administrative remedies by appealing to the warden within ten days of the disciplinary committee decision pursuant to WIS. ADM. CODE § DOC 303.76(7). In addition, it argues that he should have filed a petition for a writ of certiorari within six months of the disciplinary committee's decision. It relies on case law providing that six months is the maximum period in which an appeal by certiorari can be taken when a time limit is not otherwise established by statute. *State ex rel. Casper v. Board of Trustees*, 30 Wis.2d 170, 174-75, 140 N.W.2d 301, 303 (1966).

We reject Price's argument that he could not have filed a petition for a writ of certiorari within six months because he had not yet discovered the exculpatory information. Price's trial court brief and attachments indicate that he discovered the information on June 7, 1993, which was approximately four and a half months after the January 27, 1993, disciplinary committee hearing and decision.

While we reject Price's argument, we find it unnecessary to resolve the issue of whether he was required to avail himself of one of the alternative

remedies touted by the State rather than proceeding by habeas corpus. The record indicates that Price appealed to the director of the correctional center system on June 14, 1993, seven days after discovering the letter informing the Abode Correctional Center superintendent that he had been served rum cake on the day he received the conduct report. Corwin Vander Ark, the southern sector chief, responded to the letter. While pointing out that an appeal should have been filed pursuant to WIS. ADM. CODE § DOC 303.76(7) within ten days of the hearing and that Price's appeal was therefore untimely, Vander Ark stated that he had reviewed the substance of the claims and would have affirmed the finding and disposition even if the appeal had been timely. He specifically found incredible Price's claim that the alcohol on his breath and his behavior in disobeying orders during the breath test were due to having eaten a piece of rum cake.

After reviewing Price's habeas corpus petition and attachments, including the response from Vander Ark, the trial court concluded that the letter was not exculpatory evidence such that withholding it constituted a denial of due process at the disciplinary hearing. We agree. As concluded by Vander Ark, no reasonable basis exists to believe that eating rum cake while at work would have caused Price to fail an alcohol test when he returned to the correction center. Moreover, even if the disciplinary committee had known of the cake, the information would have provided no justification for Price's disobedience of orders when taking the breath test. Because no basis therefore exists to believe that the result of the disciplinary hearing would have been different if the committee had been presented with this information, the trial court properly determined that Price was not deprived of any constitutional rights during the proceedings and was not entitled to habeas corpus relief.

By the Court. – Order affirmed.

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