

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 9, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-2549

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN EX REL HAROLD E. TAVES,

PETITIONER-APPELLANT,

v.

**MICHAEL T. SULLIVAN, SECRETARY, WISCONSIN
DEPARTMENT OF CORRECTIONS, AND DONALD
GUDMANSON, WARDEN, OSHKOSH CORRECTIONAL
INSTITUTION,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Lincoln County:
J. M. NOLAN, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Harold Taves appeals a trial court order that denied his petition for a writ of habeas corpus. Taves's habeas corpus petition attacked the Wisconsin Department of Correction's decision to revoke his

probation. The Department carried out the revocation more than eighteen months earlier, after Taves had signed a written waiver of his right to an administrative hearing. Taves claimed that a probation officer coerced him into waiving his right to a revocation hearing. The trial court held an evidentiary hearing on Taves's habeas corpus petition and ruled that Taves's testimony was not credible. The trial court refused to hear two other witnesses that Taves offered on his behalf.

On appeal, Taves raises three arguments: (1) the trial court erroneously refused to hear his two witnesses; (2) the trial court's finding on his credibility violated his constitutional right to confront witnesses; and (3) the probation agent did in fact coerce Taves's waiver of a revocation hearing. In response, the Department argues that Taves's habeas corpus petition was the incorrect procedure to attack the revocation. It claims that he should have used a writ of certiorari and filed it much sooner than eighteen months after the revocation. We agree with the Department and reject Taves's arguments. We therefore affirm the trial court's order denying his petition for a writ of habeas corpus.

Initially, we agree with the Department that Taves should have used a writ of certiorari to attack the probation revocation. *See State ex rel. Johnson v. Cady*, 50 Wis.2d 540, 550, 185 N.W.2d 306, 311 (1971). Regardless, even if we read Taves's habeas corpus petition as a certiorari petition, Taves would still have no grounds to overturn his revocation. First, Taves waited too long to file a certiorari petition and is guilty of laches. *See State ex rel. Reddin v. Galster*, 215 Wis.2d 178, 183, 572 N.W.2d 505, 507 (Ct. App. 1997). Six months is the general deadline for certiorari review, *see id.*, and Taves waited more than eighteen months. We will not sanction a delay of this length. Taves has simply failed to

use the ample remedies he had available. We therefore uphold the trial court on the basis of laches.

Second, if we were to review the merits, we see no error in the trial court decision. The trial court listened to Taves's testimony and found his testimony incredible and manipulative. The trial court was the arbiter of credibility, and we cannot overrule it unless Taves was credible as a matter of law. *See State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757 (1990). We have reviewed the record and cannot reach that conclusion. Once the trial court doubted Taves's truthfulness and viewed his testimony as obstructive, the court had no obligation to hear more evidence.

We further note that Taves's other witnesses had no personal knowledge of the central facts. Their testimony would have thus been inadmissible on the core issue of whether the probation agent coerced Taves. *See State v. Cuyler*, 110 Wis.2d 133, 139, 327 N.W.2d 662, 666 (1983). As Taves's offer of proof showed, however, they evidently had personal knowledge of other matters, and their testimony might have been admissible on collateral issues, such as the probation agent's character. Taves's failure of proof on the central facts, however, made character and similar issues irrelevant. Once the trial court believed that Taves was falsifying his testimony, the court had no cause to delve into character issues involving others.

By the Court.—Order affirmed.

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

