

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-0311
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-1386

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. BERNARD L. BEYER,

PETITIONER-APPELLANT,

V.

STEPHEN M. PUCKETT,

RESPONDENT-RESPONDENT.

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

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Bernard Beyer appeals the circuit court's order quashing his writ of certiorari and dismissing his petition. Beyer argues that Stephen Puckett, the Director of the Bureau of Offender Classification and Movement, improperly denied his request to change his security classification. We affirm.

¶2 On September 12, 1999, Puckett affirmed the Program Review Committee's decision to deny Beyer's request to reduce his security classification from medium to minimum. On March 1, 2000, the PRC again denied Beyer's request to reduce his security classification. Puckett affirmed this decision on May 7, 2000. Two days before Puckett made his second decision, on May 5, 2000, Beyer submitted to the circuit court a petition for certiorari review of the agency's actions.¹ The return to the writ and, by extension, the record before us, does not contain Puckett's May 7 decision because it was made after Beyer submitted his petition for certiorari review. Therefore, the only decision before us is the decision made by Puckett on September 12, 1999. *See State ex rel. Conn v. Board of Trustees*, 44 Wis. 2d 479, 482, 171 N.W.2d 418 (1969) (a certiorari court is confined to the record that was before the agency).

¶3 A security classification decision can be reviewed by a writ of certiorari. *See State ex rel. Richards v. Traut*, 145 Wis. 2d 677, 678, 429 N.W.2d 81 (Ct. App. 1988). On certiorari review, we are limited to determining: (1) whether the agency kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable; and (4) whether the evidence presented was such that the agency might reasonably make the decision it did. *Van Ermen v. DHSS*, 84 Wis. 2d 57, 63, 267 N.W.2d 17 (1978). On appeal, the scope of our review is identical to that of the circuit court. *Id.*

¹ The petition was not filed in the circuit court until May 22, 2000, because Beyer had to first petition for waiver of fees.

¶4 Beyer contends that Puckett wrongly denied his request to reduce his security classification from medium to minimum security. He contends that the return to the writ of certiorari was incomplete because it did not contain documents that would have shown that the reduction in security status was appropriate. WISCONSIN ADMIN. CODE § DOC 302.14 sets forth the factors that should be considered when assigning an inmate to a security classification. The weight to be given the various factors is committed to Puckett's discretion. *Cf. State ex rel. Sprewell v. McCaughtry*, 226 Wis. 2d 389, 394, 595 N.W.2d 39 (Ct. App. 1999). Although Beyer complains that the return to the writ did not contain information favorable to him, the return contains documents that adequately support the propriety and reasonableness of the classification determination.² Beyer was not entitled by rule, statute or otherwise to have included in the return to the writ information that Beyer believed would have been favorable to him. Moreover, there is no indication that Puckett considered Beyer's documents when making his decision. It is well established that certiorari review is confined to the record that was before the agency. *State ex. rel Conn*, 44 Wis. 2d at 482. We therefore reject Beyer's claim that the return was incomplete and affirm Puckett's decision.³

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

² Beyer contends the return should have included “briefs” considered by Puckett. We do not know whether the parties submitted written arguments to Puckett but, even if they did, their written arguments do not need to be included in the return because the parties submit written arguments to us.

³ In the circuit court, Beyer also argued that his program classification was wrongly denied. He has abandoned this issue on appeal.

