

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 6, 2014

Diane M. Fremgen
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. 2012AP2809

Cir. Ct. No. 2012CV283

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JESSE HARDY SWINSON,

PLAINTIFF-APPELLANT,

V.

**TINA SNIDER, LYNN NICOLIA, CONNIE ANDERSON, JEFFREY PUGH,
MARK HEISE, D. LACOST, K. NAGLE AND KIRSTEN SPLETTER,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Chippewa County:
RODERICK A. CAMERON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Jesse Hardy Swinson, pro se, appeals the dismissal of his civil rights and RICO¹ action. We affirm.

¶2 Swinson is an inmate in the Wisconsin correctional system. The defendants are employed by the Wisconsin Department of Corrections in various capacities. Swinson filed a forty-five page complaint with forty-one pages of attachments. He alleged civil rights violations under 42 U.S.C. §§ 1983, 1985 and 1986, and RICO activity. However, the actual allegations in the complaint appear to attack the results of prison proceedings related to eligibility for programming and parole, and custody classifications.² The defendants moved to dismiss for failure to state a claim. The circuit court issued a written decision dismissing the complaint and this appeal followed.

¶3 The circuit court observed Swinson's complaint and subsequent pleadings were "nearly unintelligible." His brief to this court is similarly difficult to decipher.³ We would rule against Swinson on all his claims, and would adopt the State's brief in its entirety as if set forth herein. But we decide cases on the narrowest possible grounds. See *State v. Castillo*, 213 Wis. 2d 488, 492, 570

¹ Referring to Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962.

² The State contends "Swinson is currently challenging his parole denial through a petition for certiorari review in Sheboygan County Case No. 12CV539, and he is currently challenging the legality of his custody classification in Case No. 11AP2856." Swinson did not file a reply brief and therefore we conclude these issues are admitted. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

³ In this regard, we emphasize that pro se litigants are bound to the same rules as attorneys. See *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). The time this court may devote to each case is limited. See *Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis. 2d 265, 270 n.3, 569 N.W.2d 45 (Ct. App. 1997). We have not addressed every argument or sub-argument raised by Swinson, nor will we. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

N.W.2d 44 (1997). For the sake of brevity, therefore, we affirm the dismissal of the complaint on the ground of qualified immunity.

¶4 The doctrine of qualified immunity protects public officials from civil liability if their conduct does not violate a person’s clearly established constitutional rights.⁴ See *Penterman v. Wisconsin Elec. Power Co.*, 211 Wis. 2d 458, 469, 565 N.W.2d 521 (1997). Although qualified immunity is an affirmative defense, the plaintiff has the burden to demonstrate, by closely analogous case law, that the defendants violated a clearly established constitutional right. See *id.* The relevant inquiry is fact specific, and the plaintiff must point to a controlling case, decided before the events at issue, that establishes a constitutional violation on materially similar facts. *Id.* at 471.

¶5 Here, the State contends Swinson did not identify a clear violation of a constitutional right. Swinson failed to file a reply brief on appeal. Issues not refuted are deemed admitted. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979)

¶6 However, even on the merits, it is clear Swinson’s complaint may not be sustained. Swinson sued eight defendants, including social workers, classification specialists, the director of the Bureau of Classification and Movement, as well as the chairperson and a commissioner at the Wisconsin Parole Commission. The allegations in Swinson’s complaint do not implicate the defendants in anything other than discretionary acts in their official capacity. He

⁴ “[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

simply disagrees with his parole determinations and other programming or custody classifications. Swinson has failed to satisfy his burden of demonstrating the violation of a clearly established constitutional right. The circuit court correctly dismissed Swinson's complaint for failure to state a claim.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

