

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 2007

David R. Schanker
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. 2005AP1777

Cir. Ct. No. 2004CV6598

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. ARTHUR J. FARIOLE, JR.,

PETITIONER-APPELLANT,

v.

DAVID H. SCHWARZ,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
FRANCIS T. WASIELEWSKI, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Arthur J. Fariole, Jr., appeals *pro se* from an order denying his petition for a writ of “certiorari/habeas corpus,” in which he seeks review of a revocation decision and challenges the effective assistance of counsel who represented him at the revocation hearing. Fariole was convicted of offenses

that occurred in Wisconsin. He was incarcerated in Wisconsin, but was then released (from Wisconsin) on parole for supervision in Missouri. The Division of Probation and Parole recommended the revocation of Fariole's parole, requiring the Missouri authorities to return Fariole to Wisconsin for revocation proceedings. Several of Fariole's challenges relate to his return to Wisconsin for the revocation hearing; other challenges relate to the grounds for revocation. Fariole misunderstands the limited scope of circuit court *certiorari* review, as opposed to the Administrative Law Judge's broader authority, who determines the appropriateness of revocation in the first instance, after presiding at the revocation hearing.

¶2 Fariole raises ten issues: (1) whether he was denied due process of law when his preliminary revocation hearing was held in Missouri; (2) whether he was denied due process when his revocation hearing was held in Wisconsin rather than in Missouri; (3) whether there was substantial evidence supporting the revocation decision; (4) whether counsel who represented him at the revocation hearing was ineffective; (5) whether his alternatives to revocation were actually (as opposed to perfunctorily) considered; (6) whether he was entitled to a good-time forfeiture hearing; (7) whether the results of his polygraph test should have been considered; (8) whether the parole officer violated his duties; (9) whether the time limitations were violated, resulting in a loss of jurisdiction; and (10) whether his right to call witnesses was violated because although these witnesses were available in Missouri, they were allegedly not available in Wisconsin. We conclude that: (1) WIS. STAT. § 302.335(2)(a)2 (2003-04) does not require a preliminary revocation hearing under the circumstances found to exist in this case; (2) Fariole was found to not have requested that proceedings remain in Missouri rather than in Wisconsin; (3) substantial evidence supported the Administrative

Law Judge's decision; (4) an ineffective assistance of counsel claim must be pursued in a habeas corpus proceeding; and (5) alternatives to revocation were meaningfully considered before they were rejected. Fariole waived the following issues because he failed to raise them in his circuit court petition: (6) whether he was entitled to a good-time forfeiture hearing; (7) whether the results of his polygraph test should have been considered; (8) whether the parole officer violated his duties; and (9) whether the time limitations were violated and if so, whether the court was thus deprived of jurisdiction. As to issue ten, Fariole did not adequately object to the hearing being moved from Missouri to Wisconsin, and did not demonstrate how his requested witnesses were necessary to his defense in the revocation proceeding. Therefore, we affirm.

¶3 The circuit court applied the proper legal standards to the relevant facts, and reached the correct decision on issues one through five, and issue ten. We therefore incorporate and adopt the circuit court's attached decision and affirm its order on those six issues. *See* WIS. CT. APP. IOP VI(5)(a) (Oct. 14, 2003) (court of appeals may adopt circuit court's opinion).¹ Fariole did not raise issues six through nine in his circuit court petition; consequently the circuit court did not consider them in its order. We conclude that Fariole's failure to raise those issues waives his right to litigate them on appeal. *See Santiago v. Ware*, 205 Wis. 2d 295, 327, 556 N.W.2d 356 (Ct. App. 1996).

¹ We disagree with the circuit court in one respect. We do not preclude Fariole from raising his ineffective assistance claims. He sought habeas corpus (in addition to certiorari) relief; it was the circuit court that limited the scope of his petition to certiorari relief. Consequently, we do not bar Fariole's ineffective assistance claims; we simply reject them as premature. Ineffective assistance claims may be pursued, but in a separate petition after a decision on the revocation issues.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT.
RULE 809.23(1)(b)5. (2003-04).

