

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2006

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. 2004AP2908

Cir. Ct. No. 1997CF973009

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES A. NEWSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. James A. Newson appeals from an order dismissing his WIS. STAT. § 974.06 (2003-04)¹ motion for lack of subject matter

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

jurisdiction. Newson claims his conviction, entered after his *Alford* plea² to delivery of cocaine, as party-to-a-crime, should be reversed because his trial counsel was ineffective. Because Newson is no longer in custody for the sentence he desires to challenge, we affirm.

BACKGROUND

¶2 On September 8, 1997, Newson entered an *Alford* plea to the above-stated charge in Milwaukee County Circuit Court Case No. 97-CF-973009. The court sentenced him to twelve months in prison and granted him sixty days credit for time served. On July 10, 1998, the Wisconsin Department of Corrections discharged Newson from his sentence in Case No. 97-CF-973009. Newson is currently in custody solely for Case No. 01-CF-006620.

¶3 On September 30, 2004, nearly six years after the completion of his sentence in Case No. 97-CF-973009, Newson filed a WIS. STAT. § 974.06 motion claiming ineffective assistance of counsel. He claims his trial counsel coerced him into entering his *Alford* plea. The trial court denied his motion for the reason that he is not “in custody under sentence of a court” within the meaning of § 974.06. Therefore, “[t]he court is ... without subject matter jurisdiction to address the defendant’s claims.”

² See *North Carolina v. Alford*, 400 U.S. 25 (1970).

ANALYSIS

¶4 Newson claims he is still “in custody” under his 1997 drug conviction because that conviction had been used to enhance his current sentence in Case No. 01-CF-006620. We are not convinced.

¶5 The challenge raised by Newson was the same challenge presented in *State v. Bell*, 122 Wis. 2d 427, 431, 362 N.W.2d 443 (Ct. App. 1984). Therein, we stated:

Since Bell had been discharged from the period of probation imposed by the trial court, he was not “in custody under sentence of a court” within the meaning of sec. 974.06, Stats. Bell, therefore, did not satisfy one of the prerequisites for the vesting of subject matter jurisdiction to a sec. 974.06 proceeding. The trial court was without subject matter jurisdiction to hear Bell’s motion and it properly dismissed his petition.

¶6 Our precedential decision in *Bell* is on all four corners with the challenge raised by Newson. He has presented no plausible reason to distinguish his circumstances from that of Bell. We therefore affirm the trial court’s conclusions of law.

By the Court.—Order affirmed.

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

