

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 9, 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. 2004AP2846

Cir. Ct. No. 2004CV8360

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. STACY L. BLUNT,

PETITIONER-APPELLANT,

V.

BRYAN BARTOW,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
VICTOR MANIAN, Reserve Judge. *Affirmed.*

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

¶1 PER CURIAM. Stacy L. Blunt appeals from an order dismissing a petition for a writ of *habeas corpus*. Blunt argues that he has been illegally confined and is therefore entitled to *habeas corpus* relief. Because Blunt's

petition does not comply with statutory and other precedential prerequisites, we affirm.

BACKGROUND

¶2 On January 8, 1996, Blunt pled guilty to one count of armed robbery, party to a crime, while concealing identity, contrary to WIS. STAT. §§ 943.32(1)(a) & (2), 939.05 and 939.641 (1995-96).¹ He is currently serving a thirty-eight year term of incarceration for that offense. On August 30, 2004, pursuant to *State v. Knight*, 168 Wis. 2d 509, 522, 484 N.W.2d 540 (1992), Blunt petitioned this court for a writ of *habeas corpus* alleging ineffective assistance of appellate counsel. In his petition, he claimed his appellate counsel failed to file a no-merit report even though he did not ask his appellate counsel to close the case. He claimed therefore, that he was denied his right to appeal. On September 8, 2004, this court denied the petition because the court records demonstrated his appellate counsel processed an appeal, which was successful for the purpose intended.

¶3 On September 24, 2004, Blunt filed in the circuit court a new petition for a writ of *habeas corpus* alleging the following grounds for relief:

1. The Petitioner is “not detained by Virtue of a Final Judgment.”
2. The Petitioner is being illegally held by the State of Wisconsin without a Final Judgment.
3. The Petitioners [sic] Constitutional rights are being violated by the state.

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

4. The Petitioner has discovered that the Wisconsin Court of Appeals, district I, “reversed the Judgment and remanded back to the trial court in Case No. 96-3237 CR.
5. The [P]etitioner was under the impression that his appeal Attorney dropped the appeal.
6. The Petitioner with the assistant [sic] from a Jailhouse lawey [sic], Complained to the Court of appeals that his appeal attorney Failed to File anything in Mr. Blunts [sic] appeal, which was later discovered that that was untrue.

Wherefore, the [P]etitioner prays that this Court grants Said writ because the [P]etitioner somehow was denied his day in Court pursuant to the Constitution.

¶4 On October 7, 2004, the circuit court denied Blunt’s petition, ruling that he is not entitled to prosecute the petition because he has failed to show he is being illegally restrained of his liberty as required by Chapter 782 of the Wisconsin Statutes prior to any writ of *habeas corpus* being issued by the court. For two reasons to be stated, we affirm.

ANALYSIS

¶5 In Blunt’s first petition for writ of *habeas corpus* filed in this court, we surmised that his petition was based on the claim that his appointed appellate counsel was ineffective for failing to file a no-merit report even though he did not ask counsel to close the case, thereby denying him his right to appeal. He alleged no other grounds forming a basis for his petition. The record, however, clearly demonstrated that not only did his counsel represent him in an appeal, but also that

his counsel was successful in obtaining a remand hearing.² Thus, we denied his petition because the record belied his claim.

¶6 In Blunt's second petition for a writ of *habeas corpus*, he conceded to the circuit court that the grounds for his first petition were baseless because an appeal was actually taken. Now, his basis for obtaining the current writ is the lack of detention by a final judgment. He argues that he is being illegally held, and his constitutional rights have been violated. In this second petition, there is no claim of ineffective assistance from appellate counsel.

¶7 The circuit court, in denying the petition, quite appropriately cited *State ex rel. Eugene Harris v. Smith*, 220 Wis. 2d 158, 582 N.W.2d 131 (Ct. App. 1998) which declared:

We recognize our obligation to liberally construe a pro se litigant's pleadings to state the correct basis for relief.... Our obligation to liberally construe a pro se litigant's pleading assumes that the litigant has otherwise made a proper argument for relief, albeit under the wrong label. Our obligation does not extend to creating an issue and making an argument for the litigant. We cannot serve as both advocate and judge.

Id. at 164-65 (citation omitted); *see also State v. Pettitt*, 171 Wis. 2d 627, 647, 492 N.W. 2d 633 (Ct. App. 1992). The circuit court states two reasons for denying the petition. First, under WIS. STAT. § 782.04(4), if the petitioner's imprisonment is by virtue of any order or process, a copy of the same must be annexed to the petition or, in the alternative, an explanation must be provided as to why such a copy could not be produced. Doubtless, there was no compliance with

² The record reflects that Blunt voluntarily abandoned any further proceedings at the circuit court level.

this requirement. Second, “a petition containing only general allegations which fails to show that petitioner is wrongfully detained is defective.” *State ex rel. Doxtater v. Murphy*, 248 Wis. 593, 602 (1945); *see also* WIS. STAT. § 782.04(3). Blunt’s petition asserts only general allegations and fails to show that his detention is defective. Thus, for both of these reasons, we affirm the order of the circuit court. From our review of the statutory and legal authority cited, there is no error in the circuit court’s denial of this petition.³

By the Court.—Order affirmed.

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

³ We also could have affirmed the order challenged in this appeal on procedural grounds based on *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994); however, we chose to dispose of the matter for those reasons set forth in the body of this opinion.

