

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 16, 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. 2004AP2200**

**Cir. Ct. No. 2004CV4772**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN EX REL. MARCELLOUS WALKER,**

**PETITIONER-APPELLANT,**

**v.**

**BYRAN BARTOW, DIRECTOR, AND WISCONSIN RESOURCE CENTER,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
CLARE L. FIORENZA, Judge. *Affirmed.*

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

¶1 PER CURIAM. Marcellous Walker appeals *pro se* from a circuit court order dismissing his petition for a writ of *habeas corpus*. He argues that *habeas corpus* is the proper mechanism for reviewing the constitutionality of Wisconsin's "sexual predator" law, under which he is currently committed. See

WIS. STAT. ch. 980 (2003-04).<sup>1</sup> Because Walker had legal remedies other than *habeas corpus* available to challenge his commitment, we affirm the circuit court's order.

¶2 In 1997, Walker was adjudicated a sexually violent person, as defined by WIS. STAT. § 980.01(7). He periodically sought release from his commitment as permitted by WIS. STAT. § 980.08. When he was unable to obtain release under the statute, he filed a *habeas corpus* petition. Walker argued that the circuit court had been without jurisdiction over the sexual-predator petition because he was convicted of a second sexual assault after the State filed its petition. He argued that the State should have been required to wait to pursue its petition until he was within ninety days of release for the second sexual assault. *See* WIS. STAT. § 980.02(2)(ag) (sexual-predator petition may be filed only when person who is the subject of the petition is within ninety days of discharge or release from a sentence imposed for a sexually violent offense). Walker also argued that WIS. STAT. ch. 980 was unconstitutional as it had been applied to him, primarily because he had not received the treatment and periodic examinations mandated by WIS. STAT. §§ 980.07 and 980.08.

¶3 The circuit court denied Walker's petition, its primary reasoning being that Walker had adequate alternative remedies at law. The circuit court pointed out that Walker was, at the time he filed his petition, pursuing relief in his WIS. STAT. ch. 980 case and was represented by counsel in that proceeding. The circuit court also reasoned that even if Walker had received the periodic ch. 980

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

exams *and* had been deemed fit for discharge, he would not have been eligible for release due to the second sentence he was serving.

¶4 On appeal, Walker reiterates his arguments in the circuit court, and he also challenges the constitutionality of WIS. STAT. ch. 980. In regard to his comments regarding the constitutionality of ch. 980 in general, we note that the questions he raises were settled in *State v. Carpenter*, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), and *State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995). Walker's arguments, to the extent they challenge the holdings in *Carpenter* and *Post*, are meritless. See *Livesey v. Copps Corp.*, 90 Wis. 2d 577, 581, 280 N.W.2d 339 (Ct. App. 1979) (this court is bound by decisions of the Wisconsin Supreme Court).

¶5 Walker's argument that he is entitled to *habeas corpus* relief because his juvenile adjudication and subsequent adult criminal sentence should have been treated as one continuous sentence and that the petition was therefore filed prematurely is equally meritless. "The extraordinary relief provided by the writ of habeas corpus is available only in limited circumstances and is subject to three prerequisites." *State ex rel. Marberry v. Macht*, 2003 WI 79, ¶23, 262 Wis. 2d 720, 665 N.W.2d 155.

First, the petitioner must be restrained of his liberty. Second, the restraint must have been imposed without jurisdiction or contrary to constitutional protections. Third, the petitioner must demonstrate that there are no other adequate remedies available in the law. Absent a showing that all three criteria are met, the writ of habeas corpus will not issue.

*Id.* (citations omitted).

¶6 As noted, the circuit court dismissed Walker's *habeas corpus* petition because he had adequate alternative remedies available to him. The

circuit court noted that Walker was, in fact, represented by counsel within the context of the WIS. STAT. ch. 980 proceedings and that counsel was pursuing relief on his behalf. As the State points out, during the proceedings in this matter, Walker has appropriately continued to pursue the remedies outlined in ch. 980 both in the circuit court and in this court in a separate appeal. Whether he has been denied relief improperly is a question that should be raised in an appeal, however, not in a *habeas corpus* petition.

¶7 Moreover, were we to assume that Walker was not barred from seeking *habeas corpus* relief for the above reasons, his request for relief would still be meritless because it is based on an inaccurate analysis of the case law. Walker argued that *State v. Keith*, 216 Wis. 2d 61, 573 N.W.2d 888 (Ct. App. 1997), required the State to treat his juvenile adjudication and adult criminal sentence as one continuous sentence and that the State, which had commenced the WIS. STAT. ch. 980 proceeding within ninety days of his release on the juvenile disposition, had commenced the proceeding prematurely. *Keith* contains no such holding, however. As the State points out, a juvenile adjudication and subsequent adult criminal sentence cannot be treated as one continuous sentence because the “concept of consecutive sentences is foreign in the context of juvenile adjudications and dispositions.” *State v. Wolfe*, 2001 WI App 136, ¶¶9-16, 246 Wis. 2d 233, 631 N.W.2d 240. Consequently, the ch. 980 petition filed relative to his juvenile adjudication was not filed prematurely.

*By the Court.*—Order affirmed.

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

