

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 29, 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. 2005AP2428

Cir. Ct. No. 2005CV7572

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. JOHN E. ISOM,

PETITIONER-APPELLANT,

V.

**JEFFREY ENDICOTT, WARDEN,
REDGRANITE CORRECTIONAL INSTITUTION,**

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN A. FRANKE, Judge. *Affirmed.*

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

¶1 PER CURIAM. John E. Isom appeals *pro se* from an order denying his petition for writ of *habeas corpus* attacking the sufficiency of the

criminal complaint and his bindover on the charge of manufacturing and delivery of a controlled substance contrary to WIS. STAT. § 961.41(1)(cm) (2003-04).¹ Because Isom has an adequate remedy at law in another pending appeal, the trial court was correct in denying the petition. We affirm.

BACKGROUND

¶2 On March 29, 2002, a jury convicted Isom of possession of a firearm by a felon and manufacturing and delivery of a controlled substance.² Isom was sentenced to nineteen years of imprisonment, including seven years of initial confinement and twelve years of extended supervision.³ Isom did not appeal.

¶3 On March 21, 2003, Isom moved *pro se* for postconviction relief pursuant to WIS. STAT. § 974.06. The trial court denied this motion on March 24, 2003, without a hearing, stating that the claims set forth in the motion contained only conclusory allegations. The trial court's ruling was summarily affirmed by this court and the Wisconsin Supreme Court denied Isom's petition for review.

¶4 Isom subsequently filed a petition for writ of *habeas corpus* with this court, which was denied on January 14, 2005. The Wisconsin Supreme Court denied his petition for review on March 14, 2005.

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

² Isom was also charged with carrying a concealed weapon. The jury returned a hung verdict on this count and, on motion of the State, it was dismissed by the trial court.

³ The total term of imprisonment consisted of two consecutive sentences. Isom was sentenced to four years of confinement and six years of extended supervision for the firearm conviction. He was sentenced to three years of confinement and six years of extended supervision for the controlled substance conviction.

¶5 On May 4, 2005, Isom filed another motion for postconviction relief under WIS. STAT. § 974.06, which the trial court denied on May 10, 2005. Isom appealed the trial court's decision, and that appeal is currently pending.⁴ In the pending appeal, Isom alleges ineffective assistance of postconviction counsel on several grounds.

¶6 On August 19, 2005, while the appeal on his second WIS. STAT. § 974.06 motion was still pending, Isom filed another petition for writ of *habeas corpus* with the trial court. The petition challenges the sufficiency and validity of the original and "advanced" criminal complaints. Isom further challenges the use of only the information in the amended complaint as the basis to bind him over for trial on the charge for manufacturing and delivery of a controlled substance. The State filed a response opposing the petition on August 23, 2005.

¶7 On August 26, 2005, the trial court denied the petition, noting the pending appeal of the second WIS. STAT. § 974.06 motion, and concluding that Isom made no showing of why the issues set forth in the petition could not, or should not, have been raised in the motion. Isom subsequently filed a response to the State's reply. The trial court construed this response as a motion for reconsideration which it denied.

¶8 This appeal followed.

⁴ This court affirmed the trial court on July 18, 2006. See *State v. Isom*, No. 05-1449, unpublished slip op. (WI App July 18, 2006). Isom filed a petition for review in the Wisconsin Supreme Court, which is still pending.

DISCUSSION

¶9 Isom claims that the trial court erroneously exercised its discretion in not granting his petition for writ of *habeas corpus*. We disagree.

¶10 Review of “[a] circuit court’s order denying a petition for writ of *habeas corpus* presents a mixed question of fact and law.” *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12. Factual determinations will be reversed only if they are clearly erroneous. *Id.* Whether a writ of *habeas corpus* is available to the petitioner is a question of law which is reviewed *de novo*. *Id.*

¶11 The writ of *habeas corpus* is an equitable remedy whose purpose is to provide relief when the authority restraining a person is constitutionally or judicially defective. *State ex rel. Wohlfahrt v. Bodette*, 95 Wis. 2d 130, 132, 289 N.W.2d 366 (Ct. App. 1980). The use of writ of *habeas corpus* may be employed to challenge the validity of a complaint or bindover. *Id.* A writ of *habeas corpus* is an extraordinary writ, available only where the petitioner demonstrates: (1) restraint of his or her liberty; (2) such restraint was imposed by a body without jurisdiction or that the restraint was contrary to constitutional protections; and (3) “that there is no other adequate remedy available” at law. *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771. “[T]he extraordinary writ of *habeas corpus* is not available to a petitioner when the petitioner has other adequate remedies available.” *Id.*, ¶14.

¶12 Here, Isom’s petition fails because the pending appeal of his second WIS. STAT. § 974.06 motion provides an adequate remedy at law. Because Isom did not challenge the sufficiency of the complaint or bindover at trial, he is limited to raising these challenges in the context of an ineffective assistance of counsel claim. Further, because Isom failed to challenge the effectiveness of trial counsel

by filing a motion pursuant to § 974.06, he is limited to asserting that he received ineffective assistance from postconviction counsel. Isom's motion, currently on appeal, does just that.

¶13 Isom's brief in his pending appeal to the second WIS. STAT. § 974.06 motion asserts that postconviction counsel was ineffective for failing to file a motion pursuant to WIS. STAT. § 974.02 to preserve issues and claims of constitutional and jurisdictional violations. Even if this assertion could not be construed to address the same issues as his petition, Isom is not permitted to raise claims in the petition that were, or should have been, raised in postconviction proceedings. *See Pozo*, 258 Wis. 2d 796, ¶10. Thus, because the challenges to the complaint and bindover should have been included in the § 974.06 motion, and Isom has not demonstrated sufficient reason why they were not, he may not raise these claims by a petition for writ of *habeas corpus*.

By the Court.—Order affirmed.

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

