

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 31, 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. 2005AP2372

Cir. Ct. No. 2005CV4526

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**STATE OF WISCONSIN EX REL.
ANTONIO SINGLETON,**

PETITIONER-APPELLANT,

v.

**PHIL KINGSTON, WARDEN,
WAUPUN CORRECTIONAL
INSTITUTION,**

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County:
RICHARD J. SANKOVITZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Antonio Singleton appeals from orders denying his petition for *habeas corpus* and petition for reconsideration. Because *habeas* relief

does not lie to address Singleton's complaints about sentences and periods of probation imposed upon him in 1996, we affirm the circuit court's orders.

¶2 Singleton was convicted of three counts of burglary on May 10, 1996. The circuit court imposed a four-year sentence on one count, and then imposed and stayed two consecutive ten-year sentences on the remaining two counts. The trial court also imposed a five-year probationary term for the latter two counts, to be served consecutively to the initial four-year sentence.

¶3 Singleton served his first sentence and was released to probation. His probation was revoked in July 2002. The Department of Corrections calculated Singleton's release date based on the twenty-year aggregate term of the two outstanding stayed sentences. Singleton filed a motion for sentence modification. The circuit court issued an order on February 15, 2005, amending the record to reflect unequivocally that the sentencing court had imposed and stayed two consecutive ten-year sentences. Singleton did not appeal.

¶4 On May 9, 2005, Singleton petitioned the circuit court for a writ of *habeas corpus*, alleging that the sentencing court had imposed consecutive terms of probation. From this premise Singleton argued that the revocation only affected one count and therefore he was only required to serve one ten-year sentence. The circuit court entered a decision and order exhaustively examining and rejecting Singleton's sentencing complaint. The circuit court denied Singleton's subsequent petition for reconsideration. Singleton appeals.

¶5 *Habeas corpus* is an extraordinary remedy available only under certain discrete circumstances: (1) the party seeking relief must be restrained of his or her liberty; (2) the restraint was imposed by a tribunal without subject matter or personal jurisdiction and contrary to constitutional protections; and

(3) the party seeking relief has no other adequate remedy at law. *State ex rel. Fuentes v. Wisconsin Ct. of App.*, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999). The petitioner must satisfy all of these conditions or “*habeas corpus* will not be available to a petitioner.” *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771.

¶6 In this case, Singleton’s claim of sentencing error by the circuit court could have been raised on direct appeal or by postconviction motion. The record indicates that Singleton did not pursue a direct appeal after conviction. Six years after Singleton’s conviction, he moved the circuit court for sentence modification. The circuit court denied the motion and the record indicates, again, that Singleton did not appeal the order. Instead, Singleton subsequently filed a petition for *habeas corpus* relief.

¶7 While the circuit court addressed the merits of Singleton’s complaint, we find no necessity to do so. The record is undisputed that Singleton litigated or waived his challenge to the circuit court’s sentence, whether that error amounted to a violation of constitutional magnitude or not, prior to filing the instant petition. To the extent that Singleton previously litigated his claim of sentencing error, we will not revisit it. See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding ...”). To the extent that Singleton failed to raise each and every complaint regarding his sentence in that motion, he is barred from seeking successive postconviction relief unless he shows a sufficient reason for not having done so. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-84, 517 N.W.2d 157 (1994).

¶8 The fact that Singleton did not pursue legal remedies, like appeals, available to him or prevail on those he did pursue does not mean that *habeas* relief is available to him. *Habeas corpus* is not just another remedy. It is well established that *habeas* relief is only available when no legal remedy exists or the legal remedy available is inadequate or ineffective to test the legality of his or her detention. *Wolke v. Fleming*, 24 Wis. 2d 606, 613, 129 N.W.2d 841 (1964), *cert. denied*, 380 U.S. 912 (1965).

¶9 Singleton has not shown that the motion to modify sentence he pursued or postconviction motions and appeals he elected not to pursue were inadequate or ineffective to test the legality of the sentences and probationary terms imposed here. It follows that Singleton has not made the requisite showing that *habeas* relief, an extraordinary remedy, is available to address this claim. We hold, therefore, that the circuit court committed no error in dismissing it.

By the Court.—Orders affirmed.

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

