

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 20, 2007

A. John Voelker
Acting 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. 2006AP467

STATE OF WISCONSIN

Cir. Ct. No. 1988CF880814

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL DANIELS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS P. MORONEY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Michael Daniels appeals from an order denying his WIS. STAT. § 974.06 (2005-06)¹ postconviction motion to withdraw his guilty plea. Because Daniels is no longer “a prisoner in custody,” he is not entitled to bring a § 974.06 motion. Therefore, we affirm the circuit court order, albeit on a different ground.

¶2 On June 23, 1988, Daniels pled guilty to three counts in the underlying criminal complaint—one count of possession of a firearm by a felon, one count of misdemeanor possession of marijuana, and one count of felony bail jumping. Daniels was sentenced to concurrent sentences of twelve months, thirty days and twelve months, respectively. On that same day, Daniels also pled guilty and was sentenced on charges alleged in two other criminal complaints. Those sentences were to run consecutively to the sentences imposed in this case. Daniels did not move to withdraw his guilty plea in those cases, and they are not before this court.²

¶3 Daniels did not appeal the judgment of conviction. On February 3, 2006, Daniels, acting *pro se*, filed a “motion for postconviction relief to set aside conviction and vacate sentence.” In the motion, Daniels asserted that the circuit court violated WIS. STAT. § 971.08 by not establishing that he knew the nature of the charges. He further asserted that his trial attorney did not explain the elements of the charges to him, and therefore, his guilty plea was involuntary and not

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted. The substance of the statutes referred to in this opinion has not changed since Daniels pled guilty in 1988. For simplicity sake, we will refer to the current version of the statutes throughout the opinion.

² The record does not indicate what sentences were imposed in these cases.

knowingly made. The motion appears to be a “form” motion, with Daniels inserting his name, case number, date of plea, circuit court judge and attorney information. The circuit court denied Daniels’s motion, holding that Daniels’s contentions were not supported by the transcript of the guilty plea hearing.

¶4 Although the circuit court chose to address the merits of Daniels’s motion, we discern a more fundamental question—whether Daniels is “a prisoner in custody under a sentence of a court,” and thereby, entitled to file a postconviction motion under WIS. STAT. § 974.06. Section 974.06(1) provides in relevant part:

After the time for appeal of postconviction remedy provided in s. 974.02 has expired, a prisoner in custody under sentence of a court ... claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

¶5 Daniels filed his postconviction motion from the federal prison in Terre Haute, Indiana. He filed his appellate briefs from the federal prison in Atlanta, Georgia. In his reply brief, Daniels acknowledges that he is incarcerated in federal prison and serving a federal sentence. It is undisputed that Daniels has long since served the sentence imposed in 1988 in this case. Daniels states, however, that his federal sentence was “significantly enhanced” by the existence of his 1988 Wisconsin conviction, and argues that he is “in custody under the state sentence under attack, by virtue of the collateral consequences” arising from the 1988 sentence.

¶6 We decline to address Daniels’s argument. The limitation on the availability of a WIS. STAT. § 974.06 motion to “a prisoner in custody under sentence of a court” is a “rigid jurisdictional requirement ... imposed upon the courts by the legislature.” *State v. Theoharopoulos*, 72 Wis. 2d 327, 334, 240 N.W.2d 635 (1976). A circuit court “has no jurisdiction to entertain a [§]974.06 motion brought by a person who is not in custody under sentence of a court.” *Jessen v. State*, 95 Wis. 2d 207, 211, 290 N.W.2d 685 (1980). Serving a federal sentence in federal custody does not satisfy the statutory requirement. *See Theoharopoulos*, 72 Wis. 2d at 334. Because Daniels was not entitled to use § 974.06 to seek withdrawal of his guilty plea, we affirm the circuit court’s order denying his postconviction motion.

By the Court.—Order affirmed.

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

