COURT OF APPEALS
DECISION
DATED AND FILED

April 24, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP798-CR **Cir. Ct. No. 2002CF162**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN D. TIGGS, JR. A/K/A A'KINBO J.S. HASHIM,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed*.

Before Higginbotham, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. John Tiggs appeals from an order denying his motions for correction of his prison release date and for resentencing and from an order denying reconsideration. We affirm.

¶2 Tiggs filed two motions that were addressed in a single circuit court hearing and denied in the same order. The first motion was "for clarification on the application of the 'bad time' provision." Tiggs claimed that the Department of Corrections had incorrectly applied WIS. STAT. § 302.113(3)(b) (2005-06)[1] to extend his expected confinement time by twenty-four days due to time he spent in segregation. The circuit court concluded that it did not have jurisdiction to address this issue because it was an administrative matter, that Tiggs had not completed the administrative review process for that decision, and that, therefore, the motion was premature. The court advised Tiggs that after the administrative review was completed, Tiggs could file a "petition for judicial review."

¶3 On appeal, Tiggs's opening brief does not address the reason used by the circuit court to deny his motion. Instead, he argues only the statutory interpretation issue of whether the department correctly applied the confinement statute. We conclude that Tiggs is seeking relief from an administrative decision by the department rather than from a decision in the criminal case. Therefore, rather than filing his "clarification" motion in the sentencing court, Tiggs should have filed a petition for a writ of certiorari seeking judicial review of the department's decision or, if some other specific statutory remedy is available for judicial review of that type of decision, by proceeding under that statute. Because no such proceeding occurred in this case, there is no record from which it can be determined whether Tiggs exhausted his administrative remedies.

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 Tiggs also filed a "request for review and correction of sentence based upon inaccurate information." Tiggs asserted that in sentencing him the court relied on statements by the corrections officer victim regarding injuries he sustained in the crime but that, in fact, the officer overstated the actual extent of his injuries. Although Tiggs did not cite the statute, his motion is essentially a postconviction motion under WIS. STAT. § 974.06. Tiggs has already had a postconviction motion and appeal under WIS. STAT. § 974.02 and WIS. STAT. RULE 809.30. *See* ***State v. Tiggs***, No. 2004AP2649-CR, unpublished slip op. (WI App April 13, 2006). Therefore, any claims Tiggs raises in a motion under § 974.06 are barred unless he had a sufficient reason for not raising them in the earlier motion or appeal. WIS. STAT. § 974.06(4); ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

¶5 Tiggs argues that he did not raise this sentencing issue earlier because he is relying on a 2006 Wisconsin Supreme Court case that clarified the law relating to use of inaccurate information at sentencing, and this opinion had not yet been released at the time of his earlier postconviction motion and appeal. While the holding of that case may arguably have made it easier for a defendant to prevail on this issue, it is clear from the opinion that relief had been available for many years before that for claims of use of inaccurate information at sentencing. *See* ***State v. Tiepelman***, 2006 WI 66, ¶¶9-25, 291 Wis. 2d 179, 717 N.W.2d 1. Therefore, we do not regard this as a sufficient reason for Tiggs not raising the sentencing issue earlier. Tiggs argues that this waiver rule is merely one of administration and that we should still address the issue. We see no reason to do so in this case.

By the Court.—Orders affirmed.

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