

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 1, 2010

David R. Schanker
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. 2009AP394

Cir. Ct. No. 2008CV0310

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. TRACY A. STOKES,

PETITIONER-APPELLANT,

V.

LARRY JENKINS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Waushara County:
GUY D. DUTCHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Tracy A. Stokes appeals an order quashing a writ of habeas corpus and dismissing his petition in which he alleged ineffective assistance of counsel at his probation revocation hearing. Because we conclude that the specific issues raised in the petition could only be raised by certiorari

review and the allegation of ineffective assistance of counsel lacks specificity, we affirm the order.

¶2 In 2007, an administrative law judge revoked Stokes's probation and the Division of Hearings and Appeals affirmed the revocation. Stokes appeared at the hearing with his attorney, Brenda VanCuick. At some point in the revocation hearing, Stokes began to represent himself.¹ Stokes's petition alleged that he did not fire VanCuick and the administrative law judge (ALJ) forced him to continue with the revocation hearing without determining whether he was competent to represent himself and without ascertaining whether he knew the pitfalls of self-representation. The petition also alleged that the ALJ lost competency to proceed, that Stokes was not given proper notice of the allegations, and that the decision to revoke his probation was arbitrary and capricious and represented the ALJ's will and not her judgment.

¶3 Probation revocation decisions are reviewable by writ of certiorari. *State ex rel. Cramer v. Schwarz*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591. When an issue could be reviewed by writ of certiorari, relief under habeas corpus will not be granted. *See State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 186-87, 572 N.W.2d 505 (Ct. App. 1997). That is because habeas corpus will not be granted where other adequate remedies at law exist. *State ex rel. Dowe v.*

¹ The record on appeal does not contain a transcript of the revocation hearing. After briefing was completed, Stokes filed a motion for this court to take judicial notice of two compact discs that he avers contain audio recordings of the revocation proceedings. Because habeas corpus is not the appropriate method for raising issues regarding the revocation hearing, we conclude the content of the recordings does not bear on this court's decision. The motion is denied.

Circuit Court for Waukesha County, 184 Wis. 2d 724, 729, 516 N.W.2d 714 (1994).

¶4 Most of the issues raised in Stokes’s petition were subject to certiorari review. Each of the specific issues faults the ALJ for her decisions. Whether the ALJ acted according to law and whether her decision was arbitrary, oppressive or unreasonable and represented her will and not her judgment are matters specifically reviewable by certiorari. *Cramer*, 236 Wis. 2d 473, ¶28 n.8. Because certiorari review is or was available for these issues,² the court properly denied habeas corpus relief.

¶5 Ineffective assistance of counsel at a revocation hearing is reviewable by habeas corpus. *State v. Ramey*, 121 Wis. 2d 177, 182, 359 N.W.2d 402 (Ct. App. 1984). That is because a claim of ineffective assistance of counsel ordinarily depends on facts that would not be found in the record. Therefore, certiorari review would not be available for that issue.

¶6 Although Stokes labels many of his complaints “ineffective assistance of counsel,” in each instance he actually faults the ALJ for decisions she

² Stokes’s petition and affidavit assert that he attempted to timely file a petition for a writ of certiorari when he was in the Kenosha County Jail. He avers that he placed the petition in the possession of jail staff for mailing, correctly addressed to the Kenosha County Clerk of Courts and in compliance with jail rules regarding postage. Instead of mailing the petition, he contends that the jail staff packed the letter with his other property and he did not learn of the staff’s failure to mail the certiorari petition until relatives picked up property left at the jail. Under the “prison mailbox rule” the time for filing a petition for a writ of certiorari is tolled when an inmate places a petition in an institution mailbox and meets the filing conditions. *See State ex rel. Shimkus v. Sondalle*, 2000 WI App 262, ¶2, 240 Wis. 2d 310, 622 N.W.2d 763. Stokes does not allege that he has attempted to file a petition for a writ of certiorari along with an affidavit invoking the prison mailbox rule in the Kenosha County Circuit Court. We offer no opinion whether Stokes may still invoke the prison mailbox rule and secure certiorari review of his revocation in the Kenosha County Court.

made regarding representation of counsel. The petition does not identify specific deficient performance by VanCuick. The petition describes a “breakdown in communication” between Stokes and VanCuick, but does not elaborate on any actions of counsel at the revocation hearing. Stokes’s primary criticism of counsel appears to relate to her performance regarding a petition for a writ of prohibition.

¶7 A habeas petition must contain a statement of the legal issues and a sufficient statement of facts that bear on those legal issues which, if found to be true, would entitle the petitioner to relief. *State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶18, 290 Wis. 2d 352, 714 N.W.2d 900. Conclusory allegations are insufficient to state a claim for ineffective assistance of counsel. *Gallo-Vasquez v. United States*, 402 F.3d 793, 797 (7th Cir. 2005). A petition is not sufficient if it contains conclusory or speculative allegations rather than specific factual allegations. *Daniels v. United States*, 54 F.3d 290, 293 (7th Cir. 1995). Stokes’s claims that VanCuick provided constitutionally deficient representation and his conclusory statement regarding the breakdown in communication are not sufficiently developed to allow the court to meaningfully assess his claim. *See State v. Allen*, 2004 WI 106, ¶19, 274 Wis. 2d 568, 682 N.W.2d 433.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

