

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 2010

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. 2009AP3171-CR

Cir. Ct. No. 2001CF6508

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DECARLOS M. YOUNG,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Decarlos M. Young, *pro se*, appeals from an order denying his postconviction motion to amend his judgment of conviction to reflect his “common law name for spiritual significance,” Khali Hassan Dimean. We affirm.

¶2 In 2002, Young pled guilty to escaping from custody, a crime he committed while awaiting sentencing for first-degree reckless homicide. He was sentenced to four years of initial confinement and one year of extended supervision, consecutive to thirty-five years of initial confinement and twenty years of extended supervision that he received in the reckless homicide case.¹ Young did not appeal his conviction for escape.

¶3 In 2009, Young filed a postconviction motion to amend the judgment of conviction in this case to reflect what he claims is his common law name, Khali Hassan Dimean.² Young's motion asserted that he had used that name "for the past twenty years," but the motion offered no evidence that Young had consistently and continuously used the name Khali Hassan Dimean. *See State v. Hansford*, 219 Wis. 2d 226, 230-31, 580 N.W.2d 171 (1998) (Wisconsin "recognize[s] a common law right to change one's name through consistent and continuous use, as long as the change is not effected for a fraudulent purpose.").

¶4 After the State's brief noted this lack of evidence, Young attached two affidavits to his reply brief. The first was an affidavit from Young stating that he had been given the name Khali Hassan Dimean at age twelve to honor his mother, a practicing Muslim. However, the affidavit did not provide a single

¹ This appeal concerns Young's motion to amend the judgment of conviction in his escape case. Young did not use his spiritual name in his reckless homicide case and he has not filed a similar postconviction motion in that case.

² Although Young's appellate brief refers to the name change statute, WIS. STAT. § 786.36 (2007-08), his argument is based solely on the common law. He does not claim he ever changed his name via that statute, and he has not filed a name change request pursuant to that statute.

All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

example of how or when Young had consistently and continuously used that name in the years that followed. The second affidavit was from a friend of Young. It stated that he had known Young by the names “Khali or Khali Hassan” since 1991 and was not aware that he had another name until 2001, when Young’s arrest was on the news.³

¶5 The circuit court denied Young’s motion without a hearing. It found that Young had not shown that he consistently and continuously used the name Khali Hassan Dimean and noted that Young had not used or sought to use his spiritual name during the pendency of his criminal case. The court concluded that Young’s motion could be denied for the same reasons we relied on in a similar case, *State v. Smith*, 2009 WI App 104, 320 Wis. 2d 563, 770 N.W.2d 779.

¶6 In *Smith*, we affirmed the circuit court’s denial of Smith’s motion to amend his judgment of conviction to reflect his spiritual name. *See id.*, ¶1. We stated:

Smith is asserting that his name was legally changed prior to the time he committed the crime for which he is imprisoned.... Smith asserts that his name was changed not by virtue of a court order, but by application of common law. Smith is correct that Wisconsin law allows one to change one’s name via the common law. However, we conclude that Smith’s motion—which was based on his assertion that he changed his name via the common law—failed to provide any evidence that he changed his name through consistent and continuous use. Moreover, he failed to raise this issue during the pendency of his criminal case, even though he was supposedly already using the name

³ On appeal, Young asks us to consider an affidavit from his mother indicating that Young’s friends and family call him “Khali” and a 2001 police report that refers to him as “‘Kali’ Young.” (Capitalization omitted.) We are bound by the record and will not consider these affidavits that were presented for the first time on appeal. *See State v. Aderhold*, 91 Wis. 2d 306, 314, 284 N.W.2d 108 (Ct. App. 1979).

Marcolo Von Capoeira during that time. For these reasons, the motion was properly denied.

Id., ¶11 (citation omitted).

¶7 As in *Smith*, we affirm the circuit court. First, Young has failed to provide sufficient evidence that he changed his name under the common law through consistent and continuous use. Other than stating that he was given the name Khali Hassan Dimean at age twelve and providing an affidavit from a friend stating that he knows Young by the name “Khali or Khali Hassan,” Young has not offered any proof that he consistently used the name Khali Hassan Dimean as his legal name. Second, like Smith, Young “failed to raise this issue during the pendency of his criminal case, even though he was supposedly already using the name” for years prior to his arrest. *See id.*

¶8 Young argues that *Smith* can be distinguished because Young has not filed any postconviction motions in this case, or *pro se* lawsuits, in which he failed to use his spiritual name. We are not convinced that *Smith* is inapplicable. While that case noted that Smith had failed to raise the issue of his spiritual name during both the pendency of the criminal case and during postconviction proceedings, *see id.*, ¶12, its holding was not limited to cases where postconviction proceedings occurred, *see id.*, ¶7 (“[W]e affirm because Smith has not provided any evidence to support his assertion that he changed his name pursuant to the common law and because he failed to raise this issue during his criminal case.”).

By the Court.—Order affirmed.

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

