

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 8, 2011**

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. 2010AP1577**

**Cir. Ct. No. 1998CF759**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LEE CROUTHERS,**

**DEFENDANT-APPELLANT.**

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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. Lee Crouthers, *pro se*, appeals from the denial of his motions to access his presentence investigation report and to amend his judgment of conviction to add an additional name, which he identifies as his “Common Law/Spiritual Name.” We reject his arguments and affirm.

## BACKGROUND

¶2 Crouthers was convicted of armed robbery as a party to a crime in 1998. We affirmed his conviction. *See State v. Crouthers*, No. 1999AP1307-CR, unpublished slip op. (WI App Jan. 25, 2001). Crouthers subsequently filed a number of *pro se* motions in the circuit court. At all times, he identified himself as Lee Crouthers.

¶3 In 2010, Crouthers filed two postconviction motions in the circuit court. The first motion sought “to change and/or alter” his judgment of conviction “to reflect an additional name.” (Some capitalization omitted.) Specifically, Crouthers asked that the judgment of conviction state his name as “Khenti Amenti-Bey A.K.A. Lee R. Crouthers.” The motion and Crouthers’s circuit court briefs specifically indicated that Crouthers was not seeking a name change pursuant to WIS. STAT. § 786.36(1) (2009–10) (the general name change statute).<sup>1</sup> Instead, he asserted that he had consistently and continuously used his alleged common law name since 1974 and that the judgment of conviction should reflect that.

¶4 Crouthers provided two affidavits in support of his motion. First, his own unnotarized affidavit asserted that he was given his alleged common law name in 1974. He said he uses that name in his poetry and writings and wants to be able to use it in prison without fear of violating Department of Corrections rules. The second affidavit, which is witnessed but not notarized, is from an imam at the prison where Crouthers resides. It states that the imam has known Crouthers

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009–10 version unless otherwise noted.

since Crouthers was transferred to the prison one year earlier (in 2009) and that Crouthers uses the name Khenti Amenti-Bey.

¶5 The circuit court conducted a motion hearing on June 8, 2010. Crouthers testified in support of the motion. He said that he had been using his alleged common law name “since my grandparents gave it to me in 1972.”<sup>2</sup> When asked why he did not use the name during the pendency of his criminal case or in his postconviction motions, Crouthers explained that he did not see a “need to bring that up at that time.”

¶6 The circuit court observed that it had presided over Crouthers’s case since 1998 and had never seen a reference to Crouthers’s alleged common law name. It implicitly found Crouthers’s testimony incredible and added, “I think that this is simply trying to get around the State’s legitimate interest in being able to ... identify quickly persons both within the prison and on parole.” The circuit court found that Crouthers had failed to show that he had consistently and continuously used Khenti Amenti-Bey as his common law name, and it denied Crouthers’s motion at the conclusion of the hearing.

¶7 The second motion Crouthers filed was a motion to access his presentence investigation report. On June 11, 2010, the circuit court denied this motion in a written order, without a hearing. Crouthers now appeals the denial of both motions.<sup>3</sup>

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<sup>2</sup> Crouthers did not explain why his affidavit indicated he had used that name since 1974.

<sup>3</sup> In its brief, the State questioned whether this court has jurisdiction over the denial of the motion to amend the judgment of conviction, noting that there was not a specific written order denying that motion. We consider the circuit court’s June 11, 2010 written order to be the final  
(continued)

## DISCUSSION

¶8 We begin with the denial of Crouthers’s motion seeking access to the presentence investigation report. Although Crouthers appealed the denial of that motion, he has not presented argument on that issue in his appellate brief and that issue is therefore abandoned. *See Reiman Assoc., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (issues not briefed deemed abandoned).

¶9 Next, we consider Crouthers’s motion to amend the judgment of conviction. We conclude that it was properly denied, based on *State v. Smith*, 2009 WI App 104, 320 Wis. 2d 563, 770 N.W.2d 779, a case with nearly identical facts. In *Smith*, years after the judgment of conviction was entered, the defendant unsuccessfully sought to amend it “to reflect his common law spiritual name.” *Id.*, 2009 WI App 104, ¶¶2–3, 320 Wis. 2d at 564–565, 770 N.W.2d at 780. On appeal, this court held that although Wisconsin recognizes “the 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,” *id.*, 2009 WI App 104, ¶11, 320 Wis. 2d at 568, 770 N.W.2d at 782 (citation omitted), the defendant’s motion was properly denied because he had “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,” *id.*, 2009 WI App 104, ¶7, 320 Wis. 2d at 566, 770 N.W.2d at 781.

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order in the 2010 postconviction proceedings and conclude that we have jurisdiction over the denial of both motions. *See* WIS. STAT. RULE 809.10(4).

¶10 The same reasoning applies here. Rejecting Crouthers’s testimony, the circuit court found that Crouthers had not established a common law name, and it is undisputed that Crouthers did not refer to himself using that alleged common law name during the pendency of his criminal case. The circuit court’s findings are not clearly erroneous. *See State v. Poellinger*, 153 Wis. 2d 493, 504, 451 N.W.2d 752, 756 (1990) (“The credibility of the witnesses and the weight of the evidence is for the trier of fact. In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding.”) (citations and two sets of quotation marks omitted). We agree that Crouthers’s motion was properly denied. *See Smith*, 2009 WI App 104, ¶7, 320 Wis. 2d at 566, 770 N.W.2d at 781.

¶11 Crouthers disagrees with the circuit court’s statement that Crouthers was trying to prevent the Department of Corrections from quickly identifying people in prison. He also presents arguments why he should be allowed to use his alleged common law name. Finally, he implicitly challenges the circuit court’s findings by attaching a September 2010 letter showing that Crouthers entered a writing contest using the name Khenti Amenti-Bey. We reject Crouthers’s arguments.

¶12 First, acting as the fact-finder, the circuit court was the “ultimate arbiter” of Crouthers’s credibility. *See Johnson v. Merta*, 95 Wis. 2d 141, 152, 289 N.W.2d 813, 818 (1980) (citation omitted). We have identified no reason to disturb the circuit court’s credibility assessment. Second, whether Crouthers *should* be allowed to use his alleged common law name was not an issue squarely before the circuit court. Crouthers asserted in his motion papers and at the motion hearing that he was not seeking a name change pursuant to WIS. STAT. § 786.36(1). Thus, the issue before the circuit court was whether Crouthers had

established a common law name ““through consistent and continuous use, as long as the change is not effected for a fraudulent purpose,”” *see Smith*, 2009 WI App 104, ¶11, 320 Wis. 2d at 568, 770 N.W.2d at 782 (citation omitted), not whether he should be allowed to legally change his name. Finally, Crouthers’s belated attempt to provide evidence that he recently used his alleged common law name in his writings does not alter our conclusion. *See Jenkins v. Sabourin*, 104 Wis. 2d 309, 313–314, 311 N.W.2d 600, 603 (1981) (An appellate court will not consider materials outside the Record.).

*By the Court.*—Order affirmed.

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

