

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 20, 2012**

Diane M. Fremgen  
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. 2011AP402**

**Cir. Ct. No. 2010CV2338**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN EX REL. BENJAMIN WALKER,**

**PETITIONER-APPELLANT,**

**v.**

**PETER HUIBREGTSE, WARDEN, WISCONSIN SECURE PROGRAM  
FACILITY,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Outagamie County:  
NANCY J. KRUEGER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Benjamin Walker appeals an order denying his petition for a writ of habeas corpus. Walker argues the circuit court erroneously exercised its discretion when denying his petition. He also claims that venue for

the petition should not have been transferred from Grant to Outagamie County. We reject these arguments and affirm the order.

¶2 Walker was convicted upon a jury’s verdict of stalking and burglary. He was sentenced by Outagamie County Circuit Court Judge Nancy J. Krueger to one year in the county jail for stalking, followed by a consecutive five-and-one-half-year sentence for burglary, consisting of eighteen months’ initial confinement and four years’ extended supervision. Walker filed a WIS. STAT. § 974.06 (2009-10)<sup>1</sup> motion for postconviction relief, arguing that Judge Krueger should have recused herself from the sentencing hearing because Walker’s mother had done some housecleaning work for the judge more than a decade earlier. According to the order denying Walker’s underlying petition, his § 974.06 motion was denied after Judge Krueger concluded that this tenuous connection was an insufficient reason for recusal and did not adversely affect her ability to remain impartial.<sup>2</sup>

¶3 Walker raised the same argument in this court and we rejected it in opinions and orders dated October 14, 2010 and October 25, 2010. Walker then filed the underlying petition for a writ of habeas corpus in Grant County, claiming his sentence is void because it was rendered by a “disqualified judge.” Venue was

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

<sup>2</sup> Walker has failed to include in the record his WIS. STAT. § 974.06 motion, Judge Krueger’s order denying it, or any documents challenging that decision arising from this court. It is the appellant’s responsibility to ensure completion of the appellate record and “when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court’s ruling.” *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993).

transferred to Outagamie County, Judge Krueger denied the petition, and Walker now appeals.

¶4 We conclude the circuit court properly denied the petition as procedurally barred. A petition for a writ of habeas corpus will not be granted where the petitioner has already litigated the claim, or has failed to raise it in prior proceedings, unless there was a valid reason to excuse the failure. *State v. Pozo*, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12. Here, Walker’s claim that Judge Krueger should have recused herself from sentencing has already been decided against him.

¶5 Walker nevertheless insists that the present claim differs from his earlier argument because he is not alleging that Judge Krueger should have recused herself but, rather, that she was “disqualified” because of her previous contact with his mother. Walker does not explain how this is different. Even assuming there is a difference, Walker fails to provide a valid reason for not presenting his “disqualification” challenge earlier.

¶6 With respect to Walker’s venue challenge, WIS. STAT. § 801.50(4)(a) provides that “venue of an action seeking a remedy available by habeas corpus shall be in the county ... [w]here the plaintiff was convicted or sentenced if the action seeks relief from a judgment of conviction or sentence under which the plaintiff’s liberty is restrained.” Walker was convicted and sentenced in Outagamie County. Therefore, venue was properly transferred there under the statute. In any event, it is irrelevant which county decided the petition when we agree that it was procedurally barred.

*By the Court.*—Order affirmed.

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

