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DISTRICT I

May 29, 2024

To:

Hon. Dennis P. Moroney
Reserve Judge

Anne Christenson Murphy
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Roosevelt J. Rayford
2867 N. 48th Street
Milwaukee, WI 53206

You are hereby notified that the Court has entered the following opinion and order:

2023AP337

State of Wisconsin v. Roosevelt J. Rayford (L.C. # 2008CF706)

Before White, C.J., Donald, P.J., and Geenen, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Roosevelt J. Rayford, *pro se*, appeals a circuit court order that denied his motion for postconviction relief under WIS. STAT. § 974.06 (2021-22).¹ The circuit court determined that it lacked competency to address Rayford's claims. Based upon the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Rayford pled guilty to felony bail jumping in this matter. On June 11, 2008, the circuit court imposed an evenly bifurcated three-year term of imprisonment and stayed it in favor of a three-year term of probation.

Before Rayford completed his probationary term, he was charged and ultimately convicted of felonies in two separate Milwaukee County cases. His probation in the instant case was revoked. In Milwaukee County Circuit Court case No. 2010CF480, the circuit court sentenced him on November 4, 2010, to an aggregate consecutive twelve-year term of imprisonment bifurcated as eight years of initial confinement and four years of extended supervision. In Milwaukee County Circuit Court case No. 2009CF3516, the circuit court sentenced him on December 1, 2010, to twelve months in jail consecutive to any other sentence.

Rayford was released to extended supervision in December 2018, but in January 2019, the State charged him with a felony in Milwaukee County Circuit Court case No. 2019CF61. While that charge was pending, he appeared with counsel in March 2019, at a revocation hearing conducted by an administrative law judge (ALJ) with the Division of Hearings and Appeals (DHA).² The ALJ found that Rayford was on extended supervision for this case—No. 2008CF706—and for case Nos. 2009CF3516 and 2010CF480, and that his conduct in

² The circuit court record in this matter does not include any information regarding the original sentences that Rayford received in case Nos. 2009CF3516 and 2010CF480, nor does the record include the 2019 revocation proceedings. The appendix that Rayford filed in this court, however, includes the ALJ's 2019 decision revoking Rayford's community supervision as well as several Department of Corrections (DOC) documents not included in the record. The State has not objected to the government documents in Rayford's appendix, and we take judicial notice of them. *See* WIS. STAT. § 902.01(3), (6); *see also* *Sisson v. Hansen Storage Co.*, 2008 WI App 111, ¶11, 313 Wis. 2d 411, 756 N.W.2d 667. We also take judicial notice of the information regarding Rayford's criminal cases found in the Wisconsin electronic circuit court dockets (CCAP). *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522. These materials supply substantial information regarding Rayford's criminal history.

January 2019 violated the terms of his supervision in all three matters. The ALJ imposed reconfinement time of one year, six months, and six days in the instant case; four months and two days in case No. 2009CF3516; and one year in case No. 2010CF480.

Rayford next pled guilty in case No. 2019CF61. The circuit court sentenced him on April 24, 2019, to a consecutive evenly bifurcated four-year term of imprisonment.

In December 2022, Rayford filed the WIS. STAT. § 974.06 motion underlying this appeal. He alleged that he reached his maximum discharge date in 2011 for his 2008 conviction, but that the Department of Corrections (DOC) “illegally and unlawfully reconfined him” in the matter in 2019. Rayford supported his claim with two DOC forms. One form, titled “Release Data,” showed that Rayford was released on extended supervision in this matter on April 13, 2010, and stated that his “term expires 10/19/2011.” The second form, titled “Notification of Sentence Data,” stated a release date of November 10, 2023, along with the “reason for change,” namely, his “new sentence” in case No. 2019CF61, and his reconfinement in case Nos. 2008CF706, 2009CF3516, and 2010CF480. Relying on these documents, Rayford contended that he was serving “unlawful reconfinement prison time” in connection with the 2008 conviction, and he sought an order from the circuit court directing the DOC to release him.

The circuit court concluded that it lacked competency to consider Rayford’s WIS. STAT. § 974.06 motion and denied relief without a hearing. Rayford appeals.

A circuit court’s competency to proceed is “its ability to undertake a consideration of the specific case or issue before it.” *State v. Minniecheske*, 223 Wis. 2d 493, 497-98, 590 N.W.2d 17 (Ct. App. 1998). Whether a circuit court has competency to proceed is a question of law that we review independently. *City of Eau Claire v. Booth*, 2016 WI 65, ¶6, 370 Wis. 2d 595, 882

N.W.2d 738. The circuit court correctly concluded here that it lacked competency to address Rayford's WIS. STAT. § 974.06 motion.

A person in custody may file a motion under WIS. STAT. § 974.06(1), “to vacate, set aside or correct the sentence.” *Id.* However, a circuit court's authority under § 974.06 is limited in a variety of ways. *State v. Johnson*, 101 Wis. 2d 698, 702, 305 N.W.2d 188 (Ct. App. 1981). While relief under the statute is “available ... to a prisoner attacking the imposition of [a] sentence,” the circuit court does not have competency to proceed under the statute when the prisoner “attacks the execution of his sentence rather than its imposition.” *Id.*

The motion that Rayford filed in 2022 did not challenge the sentence imposed in 2008. Rather, he challenged the revocation of his extended supervision. WISCONSIN STAT. § 974.06 is not an available mechanism to mount that challenge because revocation relates to the execution of a sentence, not its imposition. *See State v. Thompson*, 208 Wis. 2d 253, 257, 559 N.W.2d 917 (Ct. App. 1997). Revocation is addressed in administrative proceedings, not under § 974.06.

Specifically, when a person violates a condition of extended supervision, “the reviewing authority may revoke the extended supervision of the person.” WIS. STAT. § 302.113(9)(am). “Reviewing authority” means the DHA when, as here, the person has requested a revocation hearing. *See* § 302.113(9)(ag). If the DHA orders revocation, the person may challenge that decision by initiating an appeal to the DHA administrator within ten days of the decision. WIS. ADMIN. CODE § HA 2.05(8)(a) (Mar. 2017). If that appeal is unsuccessful, the person's remedy is to petition the circuit court for a writ of certiorari. *State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971); *see also* WIS. ADMIN. CODE ch. HA 2 Appendix Note: HA 2.05 (Sept. 2001).

Further, to the extent that Rayford sought to challenge the determinations of his reconfinement time and maximum discharge date, those challenges were also not cognizable under WIS. STAT. § 974.06. When the DHA revokes an offender’s supervision, the DHA determines the period of reconfinement. WIS. STAT. § 302.113(9)(am). Following the inmate’s return to confinement, the DOC also recalculates his or her maximum discharge date. WIS. ADMIN CODE § DOC 302.29(3) (Oct. 2018). An inmate who objects to those determinations and calculations must therefore begin by seeking relief from the DOC. As this court has explained, an inmate who has received a prison sentence “is under the control of the executive branch and must address his or her objections to the internal operating procedures of the DOC through the [inmate complaint review system], WIS. ADMIN. CODE ch. DOC 310, and then, if necessary, by writ of certiorari to the circuit court.” *State v. Williams*, 2018 WI App 20, ¶4, 380 Wis. 2d 440, 909 N.W.2d 177. The circuit court, sitting as the sentencing court, lacks competency to address such objections from an inmate. *Id.*, ¶1.

Rayford’s postconviction motion under WIS. STAT. § 974.06 thus was not the proper mechanism for challenging his revocation, reconfinement, and maximum discharge date. The circuit court properly determined that it lacked competency to proceed under that statute.

As did the State, we have additionally considered whether the circuit court could have addressed the substance of Rayford’s claims by construing Rayford’s motion as a petition for a writ of habeas corpus. See *Culbert v. Young*, 140 Wis. 2d 821, 827, 412 N.W.2d 551 (Ct. App. 1987) (explaining that a court reviewing a prisoner’s pleading may ignore the label that the prisoner placed on his or her filing and may instead treat the matter as if the prisoner had used the proper procedural tool). “A petition for writ of habeas corpus commences a civil proceeding wherein the petitioner claims an illegal denial of his or her liberty.” *State ex rel. Coleman v.*

McCaughtry, 2006 WI 49, ¶18, 290 Wis. 2d 352, 714 N.W.2d 900; *see also* WIS. STAT. § 782.01(1). Here, Rayford alleged that he remained illegally confined after completing his sentence in this matter, which is the kind of claim that might be pursued in a petition for writ of habeas corpus. We agree with the State, however, that if Rayford’s motion were construed as such a petition, he would nonetheless not be entitled to relief.

To obtain relief by writ of habeas corpus, the petitioner must demonstrate:

(1) restraint of his or her liberty, (2) which restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction and (3) no other adequate remedy available at law.... [A] writ will not be issued where the “petitioner has an otherwise adequate remedy that he or she may exercise to obtain the same relief.”

State v. Pozo, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12 (citation omitted).

As we have already explained, Rayford had an adequate remedy for any alleged errors in the revocation of his extended supervision and the determination of his time in reconfinement. Wisconsin law allowed him to challenge those decisions in administrative proceedings and, if unsuccessful, to continue his challenge by seeking certiorari review. Rayford therefore failed to satisfy the third of the three prerequisites for pursuit of a writ of habeas corpus. *See id.*

For the sake of completeness, we add that Rayford also failed to demonstrate that any continued restraint upon his liberty was unlawful. Rayford relied on a DOC document showing that his sentence in this matter was expected to expire on October 19, 2011, eighteen months after his release to extended supervision. His reliance on that document was misplaced. An offender released to extended supervision will not necessarily complete the sentence on the date initially anticipated. If extended supervision is revoked and the offender is reconfined, the time

that the offender must subsequently spend in reconfinement and on supervision is determined without regard to any time not spent in confinement. *See* WIS. STAT. § 302.113(9)(am), (c). Rather, as has long been the case in Wisconsin, “an offender receives no ‘credit’ for time not in confinement[.]” Michael B. Brennan & Donald V. Latorraca, *Truth-in-Sentencing Comes to Wisconsin*, WIS. LAW., May 2000, at 14, 56; *see also State v. Friedlander*, 2019 WI 22, ¶45, 385 Wis. 2d 633, 923 N.W.2d 849 (explaining that a defendant does not receive sentence credit for time on probation or on extended supervision). Therefore, an offender whose extended supervision is repeatedly revoked may ultimately be confined for the full term of imprisonment and also spend time on extended supervision. Brennan & Latorraca, *supra*, at 56.

Here, the circuit court found in 2018, when resolving an earlier postconviction issue in this matter, that Rayford had “been in and out of DOC custody numerous times on various holds and revocations.” Rayford’s current litigation reflects additional such proceedings. He has not demonstrated that any periods of reconfinement that followed his revocations exceeded the deprivation of liberty permitted by Wisconsin law. He thus cannot obtain relief by writ of habeas corpus. *See Pozo*, 258 Wis. 2d 796, ¶8. For all the foregoing reasons, we affirm.

IT IS ORDERED that the postconviction order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals