COURT OF APPEALS
DECISION
DATED AND RELEASED

November 2, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1555-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL.
SUSAN C. LULLING-PORTER,

Plaintiff-Appellant,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendant-Respondent.

APPEAL from an order of the circuit court for Dane County: RICHARD J. CALLAWAY, Judge. *Affirmed*.

Before Dykman, Sundby, and Vergeront, JJ.

PER CURIAM. Susan Lulling-Porter appeals from an order dismissing her petition for a writ of habeas corpus. The dispositive issue is

whether habeas corpus is available to her. We conclude that it is not, and therefore affirm.[1]

In 1993, Lulling-Porter pled no contest to five counts of failing to provide proper food and drink to confined animals, § 951.13, STATS. The trial court sentenced her to three years' probation, commencing in July 1993. She later filed a motion to withdraw the plea on grounds that the trial court inaccurately described the elements of the charge at the plea hearing. While acknowledging that mistake, the trial court denied the motion because Lulling-Porter failed to show that she consequently misunderstood the nature of the charge.

In February 1995, Lulling-Porter filed but later voluntarily withdrew a § 974.06, STATS., motion alleging that she pled unknowingly and involuntarily because she did not understand the charge against her. She then filed her habeas corpus petition, relying on the same grounds to void the judgment.

The trial court granted the Department of Corrections' motion to dismiss the petition. The court held that the issue raised had already been litigated and that voiding a plea is not a remedy in habeas corpus proceedings. This appeal ensued.

Lulling-Porter may not use habeas corpus to challenge her conviction. The purpose of § 974.06, STATS., is to afford an all-encompassing remedy for defendants challenging their convictions, supplanting habeas corpus and other special writs. ***State v. Johnson***, 101 Wis.2d 698, 701, 305 N.W.2d 188, 189 (Ct. App. 1981). Section 974.06(8), STATS., plainly sets forth that purpose by providing that one who is authorized to apply for § 974.06 relief or has already done so may not obtain a remedy under habeas corpus "unless it also appears that the remedy by [§ 974.06] motion is inadequate or ineffective to test the legality of his or her detention." Lulling-Porter has not shown that a § 974.06 motion would be inadequate or ineffective to challenge her plea.

[1] This is an expedited appeal under RULE 809.17, STATS.

Lulling-Porter points out, however, that relief under § 974.06, STATS., is only available to "a prisoner in custody under sentence of a court." Section 974.06(1), STATS. She contends that as a probationer, she is not a "prisoner in custody." We disagree. Section 974.06 is taken directly from 28 U.S.C. § 2255. ***Johnson***, 101 Wis.2d at 701, 305 N.W.2d at 189. Federal courts have consistently ruled that a probationer is a "prisoner under custody" for the purpose of using its provisions. *See* ***United States v. Essig***, 10 F.3d 968, 970 n.3 (3d Cir. 1993). *See also* ***State v. Bell***, 122 Wis.2d 427, 431, 362 N.W.2d 443, 445 (Ct. App. 1984) (one is no longer a "prisoner in custody" after release from probation).

By the Court.—Order affirmed.

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