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**DISTRICT IV**

November 20, 2014

To:

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

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2012AP2799

State of Wisconsin v. Reo L. Covington (L. C. #2002CF913)

Before Lundsten, Sherman and Kloppenburg, JJ.

Reo Covington, pro se, appeals from an order denying an amended WIS. STAT. § 974.06 motion to vacate his reconfinement sentence. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and summarily affirm. *See* WIS. STAT. RULE 809.21.<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Covington was convicted for robbing a bank while implying he had a firearm.<sup>2</sup> After being released to extended supervision, Covington attempted to rob the Summit Credit Union. His extended supervision was revoked and he was reincarcerated. Covington moved under WIS. STAT. § 974.06 to vacate, set-aside, or correct his reconfinement sentence. The circuit court denied the § 974.06 motion as “not the proper vehicle for seeking review of the Department’s revocation decision.” Covington filed an amended motion that was also denied on the basis that a § 974.06 motion was improper. Covington now appeals.

Covington argues that he was denied his right to allocution because he was informed by mail that he was revoked. He also argues his counsel was ineffective for: (1) failing to investigate Covington’s alibi; (2) advising Covington not to testify; (3) not objecting to the identification of Covington; (4) failing to move for a new hearing; and (5) failing to defend Covington against an allegation that he failed to reside at his approved address.

The decision to revoke extended supervision is an administrative decision. *See* WIS. STAT. § 302.113(9)(am). Moreover, the administrative reviewing authority specifies the period of time the person returns to prison. *Id.* Section 302.113(9)(g) further provides:

In any case in which there is a hearing before the division of hearings and appeals in the department of administration concerning whether to revoke a person’s extended supervision, the person on extended supervision may seek review of a decision to revoke extended supervision and the department of corrections may seek review of a decision to not revoke extended supervision. *Review of a decision under this paragraph may be sought only by an action for certiorari.* (Emphasis added).

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<sup>2</sup> Covington was also convicted of robbing a bank in Mississippi and threatened that he had a bomb.

See also *State ex rel. Cramer v. Wisconsin Court of Appeals*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591 (“The mechanism for challenging a probation revocation is a writ of certiorari that asks a circuit court to review the administrative decision.”).

It is also clear that challenges to the effectiveness of revocation counsel must be brought by a petition for writ of habeas corpus. See *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 186, 572 N.W.2d 505 (Ct. App. 1997); *State v. Ramey*, 121 Wis. 2d 177, 182, 359 N.W.2d 402 (Ct. App. 1984).

Accordingly, the circuit court properly denied Covington’s WIS. STAT. § 974.06 motion, finding that Covington was required to seek review of the administrative decision via a petition for writ of certiorari, and review of the ineffective assistance of counsel claims by a petition for a writ of habeas corpus.

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*