



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

February 2, 2018

To:

Hon. Jeffrey A. Conen
Circuit Court Judge
Safety Building
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Robert Probst
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Anthony Dotts 238583
Redgranite Corr. Inst.
P.O. Box 925
Redgranite, WI 54970-0925

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

2016AP2388

State of Wisconsin v. Anthony Dotts (L.C. # 1991CF912523)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

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).

Anthony Dotts appeals an order denying his habeas corpus petition. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Dotts filed a postconviction motion under WIS. STAT. § 974.06 in 1998, which was denied. The State argues on appeal that Dotts's current filing is thus barred by § 974.06(4), which provides that a second motion under § 974.06 is barred unless the defendant shows a "sufficient reason" for not having raised the motion's claims in the earlier postconviction motion.

The State's argument assumes, without ever clearly stating, that Dotts's most recent filing in circuit court, which is now before us on appeal, was another postconviction motion under WIS. STAT. § 974.06. However, that assumption is not supported by the document itself, which is captioned: "WRIT OF HABEAS CORPUS PETITION NOTICE/MOTION TO VACATE CONVICTION AND SENTENCE DUE TO VOID JUDGMENT IN THE INTEREST OF JUSTICE AS JUSTICE HAS MISCARRIED." In the first paragraph the document cites WIS. STAT. ch. 782, which is the habeas chapter.

If Dotts's filing is viewed as a habeas petition, the State does not argue that it is procedurally barred. However, a procedural bar does exist in that situation. Habeas is not available if a motion under WIS. STAT. § 974.06 has been denied and the remedy by motion was adequate and effective to test the legality of the detention. WIS. STAT. § 974.06(8); *State v. Pozo*, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12. Dotts does not assert that the remedy by motion was inadequate or ineffective. Accordingly, the denial of Dotts's motion under § 974.06 in 1998 makes habeas unavailable to Dotts.

IT IS ORDERED that the order appealed is summarily affirmed under Wis. STAT. RULE 809.21.

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

Diane M. Fremgen
Acting Clerk of Court of Appeals