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DISTRICT IV

April 19, 2018

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

2017AP825

State of Wisconsin ex rel. Robert J. Conant v. Chip Meister
(L.C. # 2017CV129)

Before Sherman, Blanchard, and Fitzpatrick, 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).

Robert Conant appeals circuit court orders that denied Conant's petition for a writ of habeas corpus seeking an award of good time jail credit on a bifurcated sentence that Conant has already served. After reviewing the record, we conclude at conference that this case is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm for the reasons discussed below.

A person whose liberty is being restrained in the absence of a valid judgment or order may apply to a court for a writ of habeas corpus to examine an alleged constitutional or jurisdictional error. *See* U.S. CONST. art. 1, § 9; WIS. CONST. art. 1, § 8; WIS. STAT. §§ 782.01(1) and (3) and 782.02; *State ex rel. Marberry v. Macht*, 2003 WI 79, ¶23, 262 Wis. 2d 720, 665 N.W.2d 155. Habeas corpus is an extraordinary remedy, however, that is not available when there exists an adequate alternate mechanism for seeking relief, such as a direct appeal or a postconviction motion. *See* WIS. STAT. §§ 782.02 and 974.06(8); *State ex rel. Fuentes v. Wisconsin Court of Appeals*, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999) (citations omitted).

Habeas is also generally unavailable once a sentence has already been served. *See generally* WIS. STAT. § 782.04(1) (requiring a petitioner to state where and by whom he or she is being imprisoned). We note that the State has previously argued to the Wisconsin Supreme Court that the “restraint” requirement must, of necessity, be broader than actual physical custody in certain circumstances. *See* Respondent’s Brief in *State v. Sutton*, 2010AP1391-CRNM (citing several federal cases). However, the appellant has not alleged any circumstances other than actual custody that would constitute “restraint” in this case. Thus, it is not apparent what, if any, relief could be granted in the current procedural posture of this case.

In any event, we agree with the State’s analysis that the good time provisions of WIS. STAT. § 302.43 that Conant seeks to invoke do not apply to him because he was a state prisoner

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

serving the remaining portion of a bifurcated sentence under WIS. STAT. § 973.01 following revocation. *See State ex rel. Baade v. Hayes*, 2015 WI App 71, ¶9, 365 Wis. 2d 174, 870 N.W.2d 478.

Therefore,

IT IS ORDERED that the circuit court orders denying Robert Conant's petition for a writ of habeas corpus are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals