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DISTRICT I

May 31, 2018

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

2017AP454

State of Wisconsin ex rel. Dizzy Wells v. Richard R. Schmidt
(L.C. # 2017CV761)

Before Brennan, P.J., Kessler and Brash, 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).

Dizzy Wells, *pro se*, appeals from an order of the circuit court that denied his petition for a writ of *habeas corpus*. 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 The order is summarily affirmed.

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

Wells was taken into custody on November 30, 2015, pursuant to an arrest warrant. He was charged with strangulation and suffocation, false imprisonment, and disorderly conduct with a dangerous weapon, all as a domestic abuse repeater, in Milwaukee County Circuit Court case No. 2015CF5118. He was convicted of the offenses in December 2016 and sentenced in April 2017. A notice of intent to pursue postconviction relief was timely filed; it appears that any decision on how to proceed postconviction has yet to be made.

On January 30, 2017, Wells filed the petition for a writ of *habeas corpus* that underlies this appeal. He claims he was never booked by the Milwaukee Police Department when he was taken into custody because they did not fingerprint or photograph him before transferring him, so his subsequent booking by the Milwaukee County Sheriff's Office was unconstitutional and illegal.² The circuit court denied the petition, noting that the petition was not properly verified and that it failed to meet other statutory requirements for a *habeas* petition. The circuit court additionally noted that Wells conceded he was booked by the sheriff's office. Wells appeals.

Habeas corpus is an equitable remedy, available when the process by which the petitioner is held is void. See *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶11, 252 Wis. 2d 133, 643 N.W.2d 771. “Its function is to provide a prompt and effective judicial remedy to those who are illegally restrained of their personal liberty.” *State ex rel. Wohlfahrt v. Bodette*, 95 Wis. 2d 130, 133, 289 N.W.2d 366 (Ct. App. 1980). The writ is not available if a petitioner has other adequate remedies available. See *Haas*, 252 Wis. 2d 133, ¶12.

² Wells also made conclusory allegations about a false booking photo and corruption, which he does not revisit on appeal.

A petition for a writ of *habeas corpus* must comply with WIS. STAT. § 782.04, which requires, in relevant part:

Such petition must be verified and must state in substance:

(1) That the person in whose behalf the writ is applied for is restrained of personal liberty, the person by whom imprisoned and the place where³

(2) That such person is not imprisoned by virtue of any judgment, order or execution specified in s. 782.02.

(3) The cause or pretense of such imprisonment according to the best of petitioner's knowledge and belief.

(4) If the imprisonment is by virtue of any order or process a copy thereof must be annexed, or it must be averred that ... a demand of such copy could not be made or that such demand was made ... and that such copy was refused.

(5) In what the illegality of the imprisonment consists.

The verification requirement “entails signing the document in the presence of a notary public.” *State ex rel. Santana v. Endicott*, 2006 WI App 13, ¶11, 288 Wis. 2d 707, 709 N.W.2d 515.

Wells's *habeas* petition is not verified.⁴ “[P]etitions not properly verified do not meet the requirements for a valid application.” *See id.* Wells further failed to include a copy of the order by which he is imprisoned or allege that he was unable to request or obtain a copy, and he failed

³ The respondent, Acting Sheriff Richard R. Schmidt, notes that Wells is no longer imprisoned by him; instead, Wells is in custody at Kettle Moraine Correctional Institution, presumably pursuant to a judgment of conviction.

⁴ On appeal, Wells complains that the jail did not provide a notary. This argument, aside from being conclusory, is raised for the first time on appeal; we therefore decline to consider it. *See McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, ¶32, 374 Wis. 2d 487, 893 N.W.2d 12.

to allege that he was “not imprisoned by virtue of any judgment order or execution specified” by statute.⁵ *See* WIS. STAT. § 782.04(2), (4).

Wells also did not adequately allege how his imprisonment is illegal. *See* WIS. STAT. § 782.04(5). For the first time on appeal, he claims the Milwaukee Police Department’s failure to fingerprint and photograph him is contrary to WIS. STAT. §§ 165.83(2) and 165.85(11).⁶ We generally do not consider arguments raised for the first time on appeal, *see McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, ¶32, 374 Wis. 2d 487, 893 N.W.2d 12, and raising the argument for the first time on appeal does not fix a defective petition filed in the circuit court.

Moreover, Wells’s argument is conclusory: he does not establish how the Milwaukee Police Department’s supposed failure to obtain his fingerprints and photograph deprives any government body of jurisdiction or amounts to a constitutional due process violation, especially when he appears to concede he was later properly booked by the sheriff’s office. *See Haas*, 252 Wis. 2d 133, ¶12 (*habeas* petition must show restraint was imposed “by a body without jurisdiction” or “contrary to constitutional protections”); *see also State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not consider undeveloped arguments).

⁵ Wells’s petition did not allege the arrest warrant was invalid.

⁶ WISCONSIN STAT. § 165.83(2)(a) specifies that the Department of Justice shall “[o]btain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state[.]” WISCONSIN STAT. § 165.85(11) does not exist; Wells appears to be quoting from WIS. STAT. § 165.84(1), which provides, in part, that “[a]ll persons in charge of law enforcement ... agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, ... full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody[.]”

We note two additional deficiencies in the petition. First, while Wells was taken into custody on November 30, 2015, he did not file his petition for a writ of *habeas corpus* until more than a year later, in January 2017, following his conviction. Wells has not alleged any facts in his petition to suggest that his pursuit of equitable relief was prompt. See *Wohlfahrt*, 95 Wis. 2d at 133. Second, Wells also failed to allege that he had or has no other adequate remedies available to him, such as a direct appeal from his convictions. See *Haas*, 252 Wis. 2d 133, ¶12.

Wells's petition fails to satisfy the statutory and other criteria for a writ of *habeas corpus*. The circuit court therefore properly denied the petition.

IT IS ORDERED that the order is summarily affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals