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May 11, 2021

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

2019AP1759

Thaddeus M. Lietz v. Brian Hayes
(L. C. No. 2018CV1045)

Before Stark, P.J., Hruz and Seidl, 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).

Thaddeus Lietz, pro se, appeals from an order denying his 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 (2019-20).¹ We further conclude that Lietz’s claims either were raised, or could have been raised and addressed in his prior certiorari action. As such, he had an available remedy at law, which precludes habeas relief. Therefore, we summarily affirm.

In 2016, while on probation, Lietz was charged with violating his supervision rules. Lietz entered into an alternative to revocation agreement (ATR) with the Wisconsin Department of Corrections (DOC) regarding the supervision violations.

The DOC subsequently requested a probation review hearing with the circuit court to ask that it order Lietz to serve additional jail time as a condition of his probation.² Prior to the hearing, however, Lietz rejected the ATR based on his assertion that the circuit court judge who would be presiding at the probation review hearing had a conflict of interest because Lietz had previously sued him. At that hearing, Lietz, pro se, asked for a “change of venue” based on the alleged conflict of interest.³ The court denied Lietz’s request and ordered him to remain in custody pending the outcome of the revocation proceedings.

Following a hearing, an administrative law judge (ALJ) revoked Lietz’s probation. The ALJ found that Lietz had violated several of his rules of supervision and rejected Lietz’s

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² At various points in the record, and in Lietz’s appellate briefs, this hearing is referred to as an ATR hearing. For the sake of consistency, throughout this decision, we will refer to it as a probation review hearing, which is how it is referenced in Wisconsin’s Consolidated Court Automation Programs (CCAP) records. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶15 n.1, 346 Wis. 2d 635, 829 N.W.2d 522 (taking judicial notice of CCAP records).

³ The portions of the transcript in the record reflect that the circuit court advised Lietz during the probation review hearing that he had had a right to an attorney, which right Lietz waived.

argument for an ATR. The ALJ highlighted that the DOC had offered Lietz an ATR, which he ultimately rejected, and that Lietz's explanation for doing so was "a poor excuse," i.e., "because he believed the judge had a conflict of interest because Mr. Lietz had previously sued the judge."

Lietz appealed to the Wisconsin Division of Hearings and Appeals (DHA), which remanded the matter for a new revocation hearing before a different ALJ based on Lietz's argument that he had not received all of the exhibits prior to the first hearing.

Following the second revocation hearing, the ALJ ordered Lietz's probation revoked after finding that he violated several of his rules of supervision and that "no viable alternatives to revocation [were] available or appropriate[.]" The ALJ noted that the hearing record was held open for a possible ATR, which the DOC ultimately declined to offer.

Lietz again appealed to the DHA, which sustained the ALJ's decision. The DHA rejected Lietz's arguments, including Lietz's claims that his supervision should not have been transferred from Milwaukee to Neenah, that the Neenah office had no jurisdiction over him, that the circuit court judge retaliated against him, and that he should have been given another ATR.

Lietz then petitioned the circuit court for a writ of certiorari. On certiorari review, the court upheld the revocation decision.

Lietz, pro se, then filed the habeas petition underlying this appeal seeking review of his revocation based on alleged constitutional and "breach-of-contract violations" throughout the revocation process "from start to finish." Following a hearing, the circuit court denied the writ. Lietz now appeals.

Lietz argues that he presents issues “on appeal of a habeas corpus petition that was attempting to appeal a writ of certiorari that was attempting to appeal a revocation order and decision of criminal cases that were revoked.” According to Lietz, he is entitled to habeas relief for four reasons: (1) the DOC breached the ATR; (2) the circuit court judge who presided over the probation review hearing had a conflict of interest and was biased against him, requiring a change of venue; (3) the DOC undermined the ATR when it presented false evidence at the probation review hearing; and (4) the DOC lost jurisdiction over him when his case was transferred from Milwaukee to Neenah during the revocation proceedings.

A writ of habeas corpus is an equitable remedy that protects a person’s right to personal liberty by freeing him or her from illegal confinement. *State ex rel. Dowe v. Circuit Ct. for Waukesha Cnty.*, 184 Wis. 2d 724, 728-29, 516 N.W.2d 714 (1994). Because it is an extraordinary writ, habeas corpus relief is available only where the petitioner demonstrates the following: a restraint of his or her liberty; the restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction; and no other adequate remedy is available at law. See *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771.

The dispositive issue before us is whether Lietz had another available remedy at law to pursue his claims, which would preclude habeas relief. “Whether [a] writ of habeas corpus is available to the party seeking relief is a question of the law that we review de novo.” See *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12.

“Habeas corpus is not a substitute for appeal and, therefore, a writ will not be issued where the ‘petitioner has an otherwise adequate remedy that he or she may exercise to obtain the same relief.’” *Id.*, ¶8 (citation omitted). Specifically, “[h]abeas corpus proceedings are ... not

available to challenge an administrative order revoking probation, since a writ of certiorari is available, and is the proper remedy under such circumstances.” *Haas*, 252 Wis. 2d 133, ¶14.

Review by certiorari of a revocation decision addresses the following questions: (1) whether the DHA kept within its jurisdiction; (2) whether the DHA acted according to law; (3) whether the decision was arbitrary, oppressive, or unreasonable and represented the DHA’s will and not its judgment; and (4) whether the evidence was such that the decision in question might reasonably be made. *State ex rel. Tate v. Schwarz*, 2002 WI 127, ¶15, 257 Wis. 2d 40, 654 N.W.2d 438.

With this appeal, Lietz seeks to litigate issues he either raised, or could have raised, in his certiorari action. If Lietz wanted to challenge the circuit court’s rulings on the issues he raised in his certiorari action, he could have then done so by filing a timely appeal.⁴ Instead, with this habeas action, Lietz is attempting to take a “collateral route” to secure the same relief: “Under such circumstances, the extraordinary writ of habeas corpus is not available.”⁵ See *Haas*, 252 Wis. 2d 133, ¶17.

⁴ Court records reflect that Lietz attempted to appeal the circuit court’s ruling; however, this court dismissed that appeal (case No. 2019AP1758) after concluding that Lietz’s notice of appeal was untimely. Lietz’s failure to file a timely notice of appeal does not render the certiorari procedure insufficient to address the issues he now wishes to raise.

⁵ Lietz contends that this rule was not the basis for the circuit court’s decision denying him a writ of habeas corpus, and he seems to suggest we should not rely on this rationale. The circuit court’s order on which this appeal is based provides that the writ is denied “for the reasons stated by the [c]ourt on the record in its oral decision on August 21, 2019.” This court notes that the transcript of that hearing is not included in the appellate record, and it was Lietz’s obligation to ensure the record on appeal is complete. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Consequently, we do not know the basis for the circuit court’s denial. In any event, this court can affirm on a basis other than the one relied on by the circuit court. See *State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985), *superseded by statute on other grounds*.

In his reply brief, Lietz argues that in the interests of justice, this court should review the issues he raised and that it would be a miscarriage of justice to affirm the circuit court's order without doing so. To the extent Lietz is asking for a discretionary reversal pursuant to WIS. STAT. § 752.35, which "should be granted only in exceptional cases," that relief is not warranted here. *See State v. McKellips*, 2016 WI 51, ¶30, 369 Wis. 2d 437, 881 N.W.2d 258 (citation and emphasis omitted). Accordingly, we affirm the circuit court's order denying Lietz a writ of habeas corpus.

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals