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DISTRICT III

February 14, 2023

To:

Hon. Mark J. McGinnis
Circuit Court Judge
Electronic Notice

Karla Z. Keckhaver
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Thaddeus M. Lietz
Electronic Notice

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

2022AP155

Thaddeus M. Lietz v. Jason Wells (L. C. No. 2021CV840)

Before Stark, P.J., Hruz and Gill, 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 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 (2021-22).¹ For the reasons that follow, we summarily affirm the circuit court's order.

On July 16, 2021, Lietz signed and mailed a petition for a writ of habeas corpus, which challenged his "criminal conviction" in Outagamie County case No. 2012CM836. The petition

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

alleged that the Outagamie County District Attorney's Office had committed a *Brady*² violation by failing to disclose the results of a DNA test. Alternatively, the petition alleged that Lietz's trial attorney was constitutionally ineffective by "not informing Lietz" of the DNA test results.

On August 3, 2021, Lietz signed and mailed a second petition for a writ of habeas corpus. In the August 2021 petition, Lietz challenged "a revocation in which he is currently incarcerated within." Lietz raised three arguments: (1) the rule violations for which he was revoked were unconstitutional; (2) the revocation proceedings were refiled after being dismissed, in violation of his constitutional rights; and (3) the circuit court violated his constitutional rights when imposing his sentence after revocation by ordering him to register as a sex offender. Lietz conceded in the August 2021 petition that he had "previously filed [a] writ of certiorari" challenging the revocation, but he asserted that he was entitled to "challenge aspects outside the scope of the final revocation hearing through a habeas corpus petition as well as challenge any [c]onstitutional deprivations."

Lietz's July 2021 and August 2021 habeas petitions were both filed in the circuit court on October 28, 2021. The court held a status conference on January 21, 2022. During that hearing, Lietz clarified that although he had filed two different habeas petitions, he understood that the court was addressing only the habeas petition "challenging aspects of the revocation case." The court then confirmed that it was addressing only the petition challenging Lietz's revocation and was "not addressing the second petition." The court subsequently denied Lietz's August 2021 petition in an oral ruling, stating that the petition did not "set[] forth any information to suggest

² See *Brady v. Maryland*, 373 U.S. 83 (1963).

any claim or possibility of a claim.” The court explained that the issues raised in the August 2021 petition were “currently pending in that writ [of certiorari] ... that [is] sitting before the [Wisconsin] Supreme Court,” and “with respect to the registration as a sex offender ... there’s relief that [Lietz] can seek in that criminal case.”

On January 24, 2022, the circuit court entered a written order denying Lietz’s petition for a writ of habeas corpus “for the reasons stated by the court on the record on January 21, 2022.” Lietz now appeals from the court’s January 24 order.³

On appeal, Lietz makes several arguments related to his July 2021 habeas petition. First, he argues that the July 2021 petition should have been filed in the underlying criminal case and assigned to the sentencing judge in that case, rather than being “tied to” or “consolidated” with his August 2021 petition. Lietz then argues the merits of the issues raised in the July 2021 petition.

We decline to consider Lietz’s arguments related to the July 2021 petition because they are not properly before us. An appeal is initiated by the filing of a notice of appeal, *see* WIS. STAT. RULE 809.10(1)(a), and “[t]he filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal,” *see* RULE 809.10(1)(e). Here, Lietz filed a notice of appeal from the circuit court’s January 24, 2022 order. That order denied Lietz’s petition for a writ of habeas corpus “for the reasons stated by the court on the record on January 21, 2022.” During

³ Lietz’s notice of appeal actually references the circuit court’s oral ruling on January 21, 2022. However, this court lacks jurisdiction to review an oral ruling. *See State v. McReynolds*, 2022 WI App 25, ¶13, 402 Wis. 2d 175, 975 N.W.2d 265, *review denied*, 2022 WI 104; *see also* WIS. STAT. § 808.03(1)(a) (stating that a final judgment or order “[e]ntered in accordance with [WIS. STAT. §] 806.06(1)(b) or 807.11(2)” may be appealed as a matter of right). We therefore construe Lietz’s notice of appeal as appealing the court’s written order entered on January 24, 2022.

the January 21 hearing, the court addressed only Lietz's August 2021 habeas petition challenging his revocation and the sentence imposed after revocation. Thus, the order on appeal disposed of Lietz's August 2021 petition, but it did not address his July 2021 petition. Nothing in the appellate record indicates that the court in this case ever made a ruling or took any other action on Lietz's July 2021 petition. Under these circumstances, Lietz's arguments regarding the July 2021 petition are not properly before us, and we will not address them further.

We now turn to Lietz's claim that the circuit court erred by denying his August 2021 habeas petition. 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 v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12. Habeas relief is available only where the petitioner demonstrates that: (1) the petitioner is subject to a restraint on his or her liberty; (2) the restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction; and (3) there is no other adequate remedy available at law. *Id.* Whether a writ of habeas corpus is available to a party under a given set of facts is a question of law that we review independently. *Id.*, ¶6.

Here, we conclude that the circuit court properly denied Lietz's August 2021 habeas petition because Lietz failed to show that there was no other adequate remedy available at law. In the August 2021 petition, Lietz argued that he was entitled to habeas relief because his revocation proceedings were unconstitutional in two respects: (1) the rule violations for which he was revoked were unconstitutional; and (2) the revocation proceedings were refiled after being dismissed, which violated his constitutional rights. Both of those claims, however, could have been raised in Lietz's certiorari action challenging the revocation decision.

“Review of parole and probation revocation decisions is ‘by certiorari directed to the court of conviction.’” *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 183, 572 N.W.2d 505 (Ct. App. 1997) (citation omitted). Accordingly, habeas 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.” *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶14, 252 Wis. 2d 133, 643 N.W.2d 771.

In this case, Lietz’s August 2021 habeas petition sought to challenge the revocation of his supervision, and Lietz acknowledged in the petition that he had previously filed a “writ of certiorari” challenging the same revocation decision. Certiorari review encompasses a determination of whether the agency acted according to law, *see State ex rel. Tate v. Schwarz*, 2002 WI 127, ¶15, 257 Wis. 2d 40, 654 N.W.2d 438, and that determination includes a review of whether the agency complied with constitutional requirements, *see State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶15, 256 Wis. 2d 787, 650 N.W.2d 43. Thus, Lietz could have raised his current claims regarding the constitutionality of the revocation decision in the certiorari action. Because Lietz had an adequate remedy available at law, the circuit court properly determined that he was not entitled to habeas relief based on his arguments regarding the revocation decision.⁴

⁴ In his reply brief, Lietz argues that he could not have raised his current claims regarding the revocation decision in the certiorari action because “the actions Lietz challenges [are] outside the scope of such reviewing body as well as outside evidence that could have affected the Final Revocation Hearing.” As noted above, Lietz’s August 2021 habeas petition asserted that the rule violations for which he was revoked were unconstitutional and that his constitutional rights were violated when the revocation proceedings were refiled after being initially dismissed. We fail to see—and Lietz has not persuasively explained—what prevented Lietz from raising these two issues in the certiorari action.

Lietz's August 2021 habeas petition also asserted that he was entitled to relief because the circuit court violated his constitutional rights when imposing his sentence after revocation by ordering him to register as a sex offender. Again, we conclude that Lietz is not entitled to habeas relief on this basis because he had an adequate remedy available at law. A defendant may challenge a sentence imposed after revocation by filing a postconviction motion or appeal under WIS. STAT. RULE 809.30. *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 583-84, 592 N.W.2d 307 (Ct. App. 1999). Alternatively, once the time limit for a direct appeal under RULE 809.30 has expired, "a prisoner in custody under sentence of a court" may file a motion under WIS. STAT. § 974.06 "claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state." Sec. 974.06(1). Lietz therefore had two available avenues to challenge the constitutionality of his sentence after revocation, including the requirement that he register as a sex offender. Consequently, Lietz was not entitled to habeas relief on that claim.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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