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**DISTRICT III**

January 9, 2024

To:

Hon. Jane M. Sequin  
Circuit Court Judge  
Electronic Notice

Sara Lynn Shaeffer  
Electronic Notice

Caroline Brazeau  
Clerk of Circuit Court  
Marinette County Courthouse  
Electronic Notice

Zachary Cullen Wilson  
Electronic Notice

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

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2022AP306

State of Wisconsin v. James Allen Nichols (L. C. No. 2007CF5)

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).**

James Nichols appeals from orders denying his WIS. STAT. § 974.06(8) (2021-22)<sup>1</sup> petition for a writ of habeas corpus and his motion for reconsideration. 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. We summarily affirm.

Nichols was sentenced to prison in 2007 in Marinette County case No. 2007CF5, following his convictions for second-degree intentional homicide, hiding a corpse, and being a

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

felon in possession of a firearm. In June 2018, while still incarcerated for his 2007 convictions, Nichols filed a WIS. STAT. § 974.06(2) postconviction motion. The circuit court ultimately denied that motion, and Nichols appealed. That appeal is currently pending before this court in case No. 2021AP1369.<sup>2</sup>

In January 2022, Nichols filed a petition titled, “[WIS. STAT.] § 974.06(8) Motion for Post-Conviction relief—Petition for Writ of Habeas Corpus,” in the circuit court. On January 20, 2022, the court denied the petition, concluding that Nichols failed “to raise any factual or legal basis upon which to grant the relief requested” and that Nichols had “filed multiple” such “motions in this regard in the past.” Nichols moved for reconsideration of the court’s denial of his petition. The court subsequently denied Nichols’ motion for reconsideration.

On appeal, Nichols argues that the circuit court did not have “jurisdiction” or “competency” to decide his January 2022 habeas corpus petition. We “independently review questions of subject matter jurisdiction and competency.” *City of Eau Claire v. Booth*, 2016 WI 65, ¶6, 370 Wis. 2d 595, 882 N.W.2d 738.

Barring some exceptions not relevant to this appeal, “a circuit court is never without subject matter jurisdiction.” See *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶1, 273 Wis. 2d 76, 681 N.W.2d 190; see also WIS. CONST. art. VII, § 8. “However, ‘a circuit court’s ability to exercise the subject matter jurisdiction vested in it by the constitution may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction in

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<sup>2</sup> We are releasing our decisions in case No. 2021AP1369 and in this case on the same day.

individual cases.” *Booth*, 370 Wis.2d 595, ¶7 (citation omitted). Accordingly, “[n]oncompliance with statutory mandates affects a court’s competency and ‘a court’s competency, as the term is understood in Wisconsin, is not jurisdictional at all, but instead, is defined as ‘the power of a court to exercise its subject matter jurisdiction’ in a particular case.” *Id.* (citation omitted).

A “[w]rit of habeas corpus is an equitable remedy that protects a person’s right to personal liberty by freeing him or her from illegal confinement. It arises in common law and is guaranteed by the state and federal constitutions, as well as by statute.” *State v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12 (footnotes omitted); *see also* WIS. STAT. § 782.01. “WISCONSIN STAT. § 974.06(8) sets out the statutory provisions which explain the availability, or lack thereof, of writ of habeas corpus in postconviction proceedings.” *Pozo*, 258 Wis. 2d 796, ¶9. Conversely, the “postconviction procedures in [] § 974.06—in place since mid-1970—are ‘designed to replace habeas corpus as the primary method in which a defendant can attack his [or her] conviction after the time for appeal has expired.’” *State v. Allen*, 2010 WI 89, ¶22, 328 Wis. 2d 1, 786 N.W.2d 124 (citation omitted). However, a habeas corpus petition is still required in order to make certain challenges. *See State ex. rel. Warren v. Meisner*, 2020 WI 55, ¶¶16-36, 392 Wis. 2d 1, 944 N.W.2d 588.

Here, the circuit court had both subject matter jurisdiction and competency to decide Nichols’ January 2022 habeas corpus petition. *See Village of Trempealeau*, 273 Wis. 2d 76, ¶1. A WIS. STAT. § 974.06(2) postconviction motion “is a part of the original criminal action, is not a separate proceeding and may be made at any time.” Sec. 974.06(2). Conversely, a petition for a writ of habeas corpus is a separate civil proceeding and is independent from the underlying criminal case. *State ex. rel. Korne v. Wolke*, 79 Wis. 2d 22, 26, 255 N.W.2d 446 (1977);

Howard B. Eisenberg, *Post-Conviction Remedies in the 1970's*, 56 MARQ. L. REV. 69, 79 (1972). Thus, Nichols' June 2018 motion (a § 974.06(2) motion) was part of the underlying Marinette County case. However, Nichols' January 2022 habeas corpus petition was part of a separate and independent civil action. Thus, the court had competency to decide the petition despite the fact that the appeal from the court's order denying the June 2018 motion was pending in case No. 2021AP1369.<sup>3</sup>

Nichols argues that the circuit court lacked "subject matter jurisdiction" because WIS. STAT. § 808.075(2) limited the court's authority to review issues to those enumerated in that statute. "In a case appealed under [WIS. STAT. RULE] 809.30, the circuit court retains the power to act on all issues until the notice of appeal has been filed with the clerk of the circuit court.... Thereafter, the circuit court may act only as provided in subs. (1) and (4)." RULE 808.075(2). As the State correctly argues, Nichols' January 2022 petition was not an appeal under RULE 809.30—it was petition for a writ of habeas corpus. Therefore, we conclude that § 808.075(2) has no bearing on Nichols' appeal in this case, and the court was correct in addressing Nichols' habeas corpus petition on the merits.<sup>4</sup>

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<sup>3</sup> Nichols' appellate counsel cites to two unauthored summary disposition orders in his brief-in-chief, in violation of WIS. STAT. RULE 809.23(3). Despite the State pointing out these violations in its brief, Nichols' appellate counsel cited these cases in his reply brief in a manner that again violated RULE 809.23(3). He committed similar errors in his briefs in case No. 2021AP1369. In addition, many of Nichols' appellate counsel's case citations use a materially incorrect citation format in violation of WIS. STAT. RULE 809.19(1)(e), making it particularly difficult to check the cited authorities. We admonish counsel that any future failures to comply with the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83.

<sup>4</sup> Nichols does not raise any arguments on appeal related to the merits of the circuit court's decision denying his habeas corpus petition. He argues only that the court lacked jurisdiction or competency to decide that petition.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*