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DISTRICT IV

April 4, 2013

To:

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

2011AP1977 State of Wisconsin ex rel. Ben Oldakowski v. Deborah McCulloch, Director, Sand Ridge Secure Treatment Center (L.C. # 2011CV258)

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

Ben Oldakowski appeals an order that denied his habeas corpus petition seeking release from a Chapter 980 commitment. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We affirm.

The appellant's brief raises three claims: (1) the circuit court erred in its conclusion that release was Oldakowski's only available option; (2) the Sand Ridge Secure Treatment Facility is infringing on Oldakowski's right of access to the courts by limiting his time in the law library;

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

and (3) Oldakowski is being falsely imprisoned because he was previously committed for specialized treatment under WIS. STAT. § 975.06 while serving his sentence for the same 1971 rape charge underlying his Chapter 980 commitment. The brief, however, does not present any developed arguments that apply relevant legal authority to the facts of record. Instead, Oldakowski relies largely upon conclusory assertions to demand relief.

While we will make some allowances for the failings of pro se briefs, "[w]e cannot serve as both advocate and judge," and will not scour the record to develop viable, fact-supported legal theories on the appellant's behalf. *See* ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). The depth of our discussion below is therefore proportional to the appellant's development—or lack of development—of each issue. Any additional arguments that we do not explicitly address are deemed denied. *See* ***Libertarian Party of Wisconsin v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack "sufficient merit to warrant individual attention").

With regard to whether release was Oldakowski's only available option, Oldakowski simply misunderstands the circuit court's ruling. The court was not saying that Oldakowski should be seeking some remedy other than release; it was saying that habeas corpus cannot be used to seek release if there is some other mechanism available for seeking release—in this case, petitions for discharge and petitions for supervised release.

As to Oldakowski's access to the law library, he has not provided this court with any specifics about how many hours a week he is permitted to use the library or what materials are

available. Therefore, aside from whether habeas corpus is the wrong mechanism for Oldakowski to seek relief, we have no factual basis to find any constitutional violation.

And finally, the legality of Oldakowski's initial commitment under Chapter 980 has already been found constitutional by the Wisconsin Supreme Court. Habeas corpus cannot be used to relitigate claims that either were or could have been decided in a prior case. ***State v. Pozo***, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12; *see also* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (an appellant may not relitigate matters previously decided, no matter how artfully rephrased).

IT IS ORDERED that the order denying Oldakowski's petition for a writ of habeas corpus is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals