



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

June 1, 2016

To:

Hon. David M. Reddy
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121

Sheila Reiff
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Katherine Desmond Lloyd
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Daniel A. Necci
District Attorney
P.O. Box 1001
Elkhorn, WI 53121-1001

Andrew L. Torstenson 253937
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2015AP1257-CR State of Wisconsin v. Andrew L. Torstenson (L.C. # 1992CF261)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Andrew L. Torstenson appeals pro se from a circuit court 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 (2013-14).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

Torstenson is a Wisconsin prisoner currently incarcerated at the Oshkosh Correctional Institution. He has filed numerous motions, petitions, and appeals stemming from his underlying convictions. We discuss his case's procedural history only as necessary in this opinion.

In 1994, Torstenson was convicted following guilty pleas to first-degree sexual assault of a child and incest with a child. The circuit court sentenced him to a fifteen-year prison term followed by a ten-year period of probation.

Torstenson's probation was revoked on multiple occasions. Following the most recent revocation in 2012, the circuit court sentenced him to a ten-year prison term. This court affirmed that judgment. *See State v. Torstenson*, No. 2013AP2148-CRNM, unpublished op. and order (WI App Jan. 22, 2014).

In March 2015, Torstenson filed a petition for a writ of habeas corpus, raising various issues relating to his revocation and sentence after revocation. The circuit court denied the petition without a hearing. This appeal follows.

On appeal, Torstenson contends that the circuit court erred in denying his petition. Whether habeas corpus relief is available to a petitioner is a question of law that we review de novo. *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12. Habeas corpus “is available only where the petitioner demonstrates: (1) restraint of his or her liberty, (2) which restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction and (3) no other adequate remedy available at law.” *Id.*, ¶8.

Here, we conclude that habeas corpus relief is not available to Torstenson because he had other adequate remedies available at law to raise his issues. To the extent that he wished to

challenge his revocation, he could have done so by a writ of certiorari. *State ex rel. Cramer v. Schwarz*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591.² To the extent that he wished to challenge his sentence after revocation, he could have done so by direct appeal.³ Habeas corpus is not a substitute for these remedies. *See Pozo*, 258 Wis. 2d 796, ¶8. Accordingly, the circuit court properly denied Torstenson’s petition.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

² Torstenson was not seeking to challenge his revocation on the ground of ineffective assistance of counsel. *See State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 186, 572 N.W.2d 505 (Ct. App. 1997) (a writ of habeas corpus may be available to raise a claim of ineffective assistance of counsel during a revocation proceeding).

³ This court did consider issues pertaining to Torstenson’s sentence after revocation in *State v. Torstenson*, No. 2013AP2148-CRNM, unpublished op. and order (WI App Jan. 22, 2014). Among other things, we considered whether the sentence was “the result of an erroneous exercise of discretion, was based on inaccurate information, was unduly harsh and excessive, or was otherwise illegal.” *Id.* at 2. We concluded that such issues lacked arguable merit. *Id.*