

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 22, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP1190

Cir. Ct. No. 1997CF974051

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DENG YANG,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 PER CURIAM. Deng Yang appeals from an order denying his motion to annul a judgment of conviction. The issue is whether the judgment of conviction is void because it was signed by the trial court clerk, as opposed to the trial court judge. We conclude that WIS. STAT. § 972.13(4) (1997-98) authorizes

the judge or the clerk of the trial court to sign a judgment of conviction.¹ Therefore, we affirm.

¶2 Yang pled guilty to first-degree intentional homicide as a party to the crime, in violation of WIS. STAT. §§ 940.01(1) and 939.05, for a 1997 shooting death. The trial court imposed the mandatory life sentence in prison for that offense, and “decline[d] to set a parole eligibility date,” leaving that determination to the Department of Corrections. *See* WIS. STAT. §§ 940.01(1); 939.50(3)(a). Yang did not appeal from that judgment.

¶3 In 2007, Yang moved to annul the judgment because it was signed by the trial court clerk, as opposed to the trial court judge. The trial court denied the motion as lacking merit, citing WIS. STAT. § 972.13(4) and *State v. Prihoda*, 2000 WI 123, ¶20, 239 Wis. 2d 244, 618 N.W.2d 857. Yang appeals.

¶4 WISCONSIN STAT. § 972.13(4) addresses the particularities of a judgment of conviction in a criminal proceeding and requires that “[j]udgments shall be in writing and signed by the judge or clerk.”² Yang contends that WIS. STAT. §§ 806.06 and 807.11 authorize the judge, not the clerk, to sign judgments. Sections 806.06 and 807.11, however, involve civil, not criminal proceedings. *See* WIS. STAT. § 801.01(2). Section 972.13(4) involves judgments of conviction in criminal proceedings. Moreover, the supreme court has construed that statutory section according to its plain meaning, namely that either the trial court judge or

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² WISCONSIN STAT. § 972.13 does not apply to judgments involving WIS. STAT. ch. 975; however, Yang’s criminal conviction does not involve ch. 975.

the trial court clerk is authorized to sign a written judgment of conviction. *See Prihoda*, 239 Wis. 2d 244, ¶20.³

¶5 WISCONSIN STAT. § 972.13(4) authorizes trial court clerks to sign a written judgment of conviction. Our interpretation of § 972.13(4) is consistent with that of our supreme court. *See Prihoda*, 239 Wis. 2d 244, ¶20. Yang's written judgment of conviction for first-degree intentional homicide signed by the trial court clerk on April 21, 1998 is valid. His motion to annul that judgment lacks merit.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

³ In *State v. Prihoda*, 2000 WI 123, ¶20, 239 Wis. 2d 244, 618 N.W.2d 857, the supreme court clarifies that WIS. STAT. § 972.13(4) “allows a clerk to sign a judgment ... [but] is silent about how corrections to a written judgment of conviction are to be made. Thus, Wis. Stat. § 972.13(4) does not authorize clerks to correct written judgments of conviction or sign corrected judgments independent of the [trial] court.” *Id.*

