

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 2010

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. 2009AP1137

Cir. Ct. No. 2009CV762

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. TITUS PITTS,

PETITIONER-APPELLANT,

V.

STATE OF WISCONSIN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
BONNIE L. GORDON, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Titus Pitts, *pro se*, appeals from an order of the circuit court denying his petition for a writ of *habeas corpus*. We conclude the court properly denied the petition and affirm the order.

¶2 In 1991, Pitts was convicted of armed robbery as a party to the crime and given a forty-two-month sentence. He evidently did not pursue a direct appeal of his conviction. In March 2009, he petitioned the circuit court for *habeas corpus* relative to Milwaukee County case No. 1991CF910908, alleging among other things that his plea was invalid and trial counsel was ineffective.

¶3 The court denied the motion because, it found, Pitts was no longer in the custody of the State of Wisconsin, the doctrine of laches barred the claim, and Pitts had other adequate remedies at law. Pitts appeals.

¶4 *Habeas corpus* is an extraordinary writ, available only under limited circumstances. *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771. The petitioner must demonstrate: (1) restraint of his or her liberty; (2) imposed contrary to constitutional protections or by a body lacking jurisdiction; and (3) lack of any other adequate remedy available at law. *State v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12. All three criteria must be met in order for the writ to issue. *State ex rel. Marberry v. Macht*, 2003 WI 79, ¶23, 262 Wis. 2d 720, 665 N.W.2d 155.

¶5 The record indicates, and the circuit court found, that Pitts was discharged from the sentence in the underlying case on May 2, 1995. It appears, based on the fact that he is housed at a federal correctional facility, that Pitts is presently in federal custody. Accordingly, *habeas corpus* is not available because Pitts is not “being held in violation of a constitutional right or by a tribunal that lacks jurisdiction” in Milwaukee County case No. 1991CF910908. *See State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶18, 290 Wis. 2d 352, 714 N.W.2d 900.

¶6 Additionally, Pitts had adequate remedies available. He first had a direct appeal option, which he declined for whatever reason. The circuit court also noted that Pitts had filed a postconviction motion under WIS. STAT. § 974.06 (2007-08), which had been denied, but he offered the circuit court no explanation for failing to pursue an appeal of the denial order prior to seeking *habeas corpus*. The availability of these prior remedies also bars the writ. *See Pozo*, 258 Wis. 2d 796, ¶¶9-10 (petition will not be granted if petitioner asserts a claim that could have been raised in a prior appeal and fails to explain why appeal would have been inadequate remedy).¹

By the Court.—Order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ We note that Pitts complains denial of the writ was erroneous “because the State never demonstrated to the court that his plea and conviction was not obtained Illegally.” In fact, the burden to show that restraint was imposed contrary to law rests with the party seeking the writ—that is, with Pitts, not with the State. *See State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771.

