

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 17, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

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.

No. 99-1528

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. BOBBY JOE SMITH,

PETITIONER-APPELLANT,

v.

DONALD GUDMANSON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Rock County:
JAMES E. WELKER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Bobby Joe Smith appeals from an order denying his petition for a writ of habeas corpus. The petition alleged that Smith did not enter a knowing, intelligent and voluntary guilty plea to a felony charge in 1991. The trial court summarily denied relief. We affirm that determination.

¶2 Smith was convicted of armed robbery in 1991 pursuant to a guilty plea. In a postconviction motion Smith argued ineffective assistance of trial counsel. Smith appealed and in 1994 we affirmed the judgment and the order denying postconviction relief. Smith then went back to the trial court on a WIS. STAT. § 974.06 (1997-98)¹ motion, that was also denied. We affirmed, in 1996, on Smith's second appeal. Now before the court is Smith's appeal on his third attempt to set aside his conviction.

¶3 Smith was not entitled to relief on his petition.² Once a defendant has exhausted the postconviction remedies available under WIS. STAT. § 974.02, further proceedings on review of a criminal conviction are barred unless the defendant shows a sufficient reason for failing to raise the issue earlier. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Smith offered the trial court no explanation why he could not have raised all issues in his first two postconviction proceedings.

¶4 In his reply brief, Smith blames postconviction counsel for failing to raise certain issues in the initial postconviction proceedings. He asks that we therefore construe the appeal as a petition for a writ of habeas corpus raising ineffective assistance of postconviction counsel, under *State v. Knight*, 168 Wis. 2d 509, 512-13, 484 N.W.2d 540 (1992). However, a remedy is not

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

² The trial court concluded that no person detained on a judgment of conviction is entitled to habeas corpus relief under any circumstances. That holds true only for those seeking statutory habeas corpus relief. *See* WIS. STAT. § 782.02. Common law habeas corpus provides a separate and distinct remedy. *See State ex rel. Richards v. Leik*, 175 Wis. 2d 446, 451-53, 499 N.W.2d 276 (Ct. App. 1993). We nevertheless affirm because the trial court reached the right result. *See State v. Holt*, 128 Wis. 2d 110, 124, 382 N.W.2d 679 (Ct. App. 1985).

available to one who unreasonably delays in filing the *Knight* petition, *State ex rel. Smalley v. Morgan*, 211 Wis. 2d 795, 800-03, 565 N.W.2d 805 (Ct. App. 1997). Here, postconviction counsel's alleged negligence occurred in 1992 and 1993. Smith offers no reason why we should now address those alleged acts, more than six years after the fact.

By the Court.—Order affirmed.

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

