

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 21, 2005**

Cornelia G. Clark  
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. 2004AP1901  
STATE OF WISCONSIN**

**Cir. Ct. No. 2004CV12**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. BENNY J. BRIDGES,**

**PETITIONER-RESPONDENT,**

**V.**

**THOMAS KARLEN, WARDEN,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Jackson County:  
GERALD W. LAABS, Judge. *Reversed.*

Before Dykman, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. The warden of Jackson Correctional Institution, on behalf of the State, appeals from an order releasing Benny Bridges from his prison sentences. The trial court held that the Department of Corrections (DOC) had

effectively discharged Bridges from his sentences in April 1998, effective October 20, 1997. We conclude otherwise, and therefore reverse.

¶2 In October 1987, the circuit court for Taylor County convicted Bridges on six burglary counts, in case number 87-CF-19. On counts 2 and 3, Bridges received consecutive five-year prison sentences. On counts 1, 4, 5 and 6, the court imposed and stayed concurrent six-year prison terms, consecutive to counts 2 and 3, and placed Bridges on probation for six years, also consecutive to the sentences imposed on counts 2 and 3. The final judgment of conviction on counts 2 and 3 was a separate document from the judgment on counts 1, 4, 5 and 6.

¶3 A few months after Bridges completed his sentences on counts 2 and 3, he received a discharge from “said judgment” in 87-CF-19, because Bridges “has satisfied said judgment.” The discharge identified this particular case as the “A” case. Bridges’ proofs in this action included a September 1996 discharge from an unrelated probation sentence, in what the discharge identified as the “B” case.

¶4 From October 20, 1997, until October 2001, Bridges was on probation pursuant to the judgment on counts 1, 4, 5, and 6 in 87-CF-19. His probation was revoked on October 25, 2001, and he began serving the four stayed six-year prison terms.

¶5 In January 2004, Bridges commenced this proceeding by filing a petition for a writ of habeas corpus. He alleged that his 1998 discharge in 87-CF-19 extended to the sentences he commenced serving in 2001. The trial court agreed, and ordered Bridges released. This appeal is taken from that release order.

¶6 Because there are no facts in dispute, the issue presented is one of law. *See Nichols v. Nichols*, 162 Wis. 2d 96, 103, 469 N.W.2d 619 (1991). We resolve such questions de novo. *Id.*

¶7 The 1998 discharge is invalid as to the sentences Bridges commenced serving after its effective date. An administrative agency has only those powers that are expressly conferred or necessarily implied from the statutory provisions under which it operates. *Conway v. Board of the Police and Fire Commrs.*, 2002 WI App 135, ¶7, 256 Wis. 2d 163, 647 N.W.2d 291. An agency act performed in excess of those powers is invalid. *See Seider v. O’Connell*, 2000 WI 76, ¶¶26, 28, 236 Wis. 2d 211, 612 N.W.2d 659. WISCONSIN STAT. § 973.09(5) directs the DOC to discharge a petitioner only upon expiration of a period of probation. The DOC has no statutory authority, express or implied, to discharge the petitioner before his probation term expires. Therefore, Bridges’ probation did not arguably expire prior to his violation.

¶8 Furthermore, we conclude that the DOC only discharged Bridges from his two, five-year prison sentences, even if it had authority to issue a broader discharge. The discharge refers to “said judgment only” although there are two separate judgments in 87-CF-19. It states that the DOC is discharging Bridges only because he “has satisfied said judgment.” The document refers to prison sentences, but not to probation. After issuing it, the DOC continued supervising Bridges’ probation for three and one-half years. In short, the April 1998 discharge is consistent with Bridges being discharged only from his five-year consecutive prison terms.

*By the Court.*—Order reversed.

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

