

In 2009, a jury found Hall guilty of eight felonies related to the sexual assault of a child.² Hall sought a new trial on grounds “that the trial court violated his right to due process when it failed to *sua sponte* order a competency evaluation after Hall indicated that his lack of medication may have been clouding his judgment.” See *State v. Hall*, No. 2013AP209-CR, unpublished slip op., ¶7 (WI App Oct. 15, 2013). Hall raised that same issue on appeal, and we affirmed. See *id.*, ¶¶8, 12.

According to online circuit court records, Hall filed *pro se* WIS. STAT. § 974.06 postconviction motions in April 2015 and August 2015. Both were denied, and Hall did not appeal.

In July 2017, Hall filed the *pro se* petition for a writ of *habeas corpus* that is the subject of this appeal.³ The petition raised a number of issues. For instance, it asserted that Hall had been denied the effective assistance of trial counsel, that the State “intentionally withheld the fact that there was no DNA evidence,” and that the trial court would have dismissed the charges if trial counsel had pointed out that there was “no evidence” to support Hall’s convictions. (Bolding and capitalization omitted.) The circuit court denied the petition in a written order, concluding that even liberally construing the petition, it was inadequate. The circuit court explained:

[A]ccording to [WIS. STAT.] § 782.03, the petition must ... include copies of any motion made under [WIS. STAT.] § 974.06 and shall

² The Honorable Kevin E. Martens presided over the jury trial and sentenced Hall. The Honorable Jeffery A. Wagner denied Hall’s postconviction motion.

³ The Honorable Mary Kuhnmuensch denied the petition. We will refer to Judge Kuhnmuensch as the circuit court.

indicate the disposition of the motion. If no [§] 974.06 motions were made, the petition should say so.

Mr. Hall’s petition is facially insufficient because he failed to mention, let alone include copies of, the [WIS. STAT. §] 974.06 postconviction motions he has previously made on his underlying case, as required by [WIS. STAT.] § 782.03. These motions are required because petitions for *habeas corpus* will not be granted where the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict. *State v. Pozo*, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12.

(Footnote and hyphen omitted; bolding added.)

Hall filed a motion for reconsideration, which the circuit court referred to as a “revised petition for a writ of *habeas corpus*.” (Bolding and capitalization omitted; italics added.) In that motion, Hall acknowledged that he previously filed two *pro se* WIS. STAT. § 974.06 motions. Hall said he “made a vital mistake when he forgot to add” copies of his motions to his petition. (Bolding omitted.) Hall’s motion for reconsideration indicated that he was attaching copies of the 2015 motions. However, as the circuit court subsequently pointed out, Hall “once again failed to include” copies of his § 974.06 motions. (Capitalization omitted.) Accordingly, the circuit court again concluded that Hall’s petition was “facially insufficient” because he had not attached copies of his prior § 974.06 motions. The circuit court further concluded, citing *State v. Escalona-Naranjo*, 185 Wis. 2d 169, 178, 517 N.W.2d 157 (1994), that Hall’s petition was procedurally barred because he should have raised his issues in his initial appeal. This appeal follows.

“A circuit court’s order denying a petition for [a] writ of *habeas corpus* presents a mixed question of fact and law.” *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12. “Factual determinations will not be reversed unless clearly erroneous,” but “[w]hether [a]

writ of *habeas corpus* is available to the party seeking relief is a question of the law that we review *de novo*.” *Id.*

We summarily affirm the circuit court’s order denying Hall’s petition for a writ of *habeas corpus* for several reasons. First, Hall’s appellate brief does not comply with the rules of appellate procedure. For instance, it lacks “[a] statement of the issues presented for review and how the trial court decided them”; “a statement of facts relevant to the issues presented for review”; and a description of “the procedural status of the case leading up to the appeal.” *See* WIS. STAT. RULE 809.19(1)(b), (d). Further, Hall has not ensured that the relevant transcripts from his criminal trial were made part of the record. *See Joseph Hirschberg Revocable Living Tr. v. City of Milwaukee*, 2014 WI App 91, ¶12 n.5, 356 Wis. 2d 730, 855 N.W.2d 699 (“It is the appellant’s responsibility to provide a complete record as to all issues [he] raises on appeal. In the absence of a complete record, we presume the missing record supports the circuit court’s decision.”) (citation omitted). Without those transcripts, neither the circuit court nor this court can adequately assess his claims.

Next, Hall’s petition for a writ of *habeas corpus* and his motion for reconsideration (which the circuit court considered a revised petition) both failed to satisfy WIS. STAT. § 782.03, which states that petitions “must contain a copy of any motion made under [WIS. STAT. §] 974.06 and shall indicate the disposition of the motion and the court in which the disposition was made.” Providing copies of prior § 974.06 motions allows the circuit court to determine whether an issue has been previously addressed. Because copies of the § 974.06 motions were not attached to Hall’s petition and are not in the appellate record, we still do not know what issues Hall has already litigated.

Finally, a “[w]rit of *habeas corpus* is an equitable remedy” that is available “only where the petitioner demonstrates ... no other adequate remedy available at law.” See *Pozo*, 258 Wis. 2d 796, ¶8. *Pozo* continued:

[I]n a postconviction setting, a petition for [a] writ of *habeas corpus* will not be granted where (1) the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reason to excuse such failure, or (2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict.

Id., ¶9. Because Hall has not provided copies of his WIS. STAT. § 974.06 motions, it is unknown whether he previously litigated the issues he raises in his petition. Even if we accept his assertion that they were not, his petition did not adequately explain why those issues were not previously raised in Hall’s direct appeal or in his § 974.06 motions. Therefore, *habeas corpus* relief is not available. See *Pozo*, 258 Wis. 2d 796, ¶9.

Upon the foregoing,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals