

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 29, 2001**

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. 00-3384**

**Cir. Ct. No. 93-CF-1190**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TERRY C. KAZEE,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
PATRICK J. FIEDLER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Terry Kazee appeals from an order denying his “motion for relief from judgment and order.” He contends that the trial court improperly construed his attempt to have a sentence following revocation declared illegal as a petition for a writ of certiorari rather than as a petition for a writ of habeas corpus. We conclude that Kazee’s motion was properly dismissed under

either construction because the facts he presented do not show that the sentence was illegal.

¶2 Because the trial court denied Kazee's motion without a hearing, the record on appeal is not fully developed. Nonetheless, the following facts appear to be undisputed. Kazee was sentenced to twenty years in prison for sexual assault of a child on August 21, 1984. He was paroled in 1992, but then convicted on November 3, 1993, of recklessly endangering safety, obstructing an officer, and retail theft. He was sentenced to two years on the reckless endangerment charge and nine months on each of the misdemeanors, with sixty-eight days of sentence credit. The three sentences were to be served concurrent with each other but consecutive to his sexual assault sentence.

¶3 Kazee's parole on the sexual assault charge was not revoked at that time. It was apparently discovered, however, that his release on parole had been based on an erroneous calculation of his mandatory release date, and he was returned to prison on that charge.

¶4 Kazee served a combined eighteen months on the remainder of his sexual assault sentence and reckless endangerment set of convictions before being paroled again sometime in 1995. A Department of Corrections worksheet calculated Kazee's mandatory release date on the reckless endangerment conviction based on a maximum discharge date of November 2, 1995.<sup>1</sup>

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<sup>1</sup> The State claims that this calculation was in error, because it was based on the erroneous assumption that Kazee's sentences were concurrent. It claims that a new calculation was made setting Kazee's mandatory release date as January 3, 2000.

¶5 On March 16, 2000, Kazee's parole was revoked on the sexual assault conviction to have him serve an additional one year, four months and two days, and his parole on the reckless endangerment conviction was revoked to have him serve an additional eight months and four days.

¶6 Kazee filed the present motion for relief on November 1, 2000, claiming that his sentence on the reckless endangerment conviction had been fully served and should have been discharged as of November 2, 1995. The trial court construed Kazee's motion as an attempt to obtain review of the probation revocation decision, then denied it on the grounds that it was untimely and that Kazee had failed to show that he had exhausted all available administrative remedies.

¶7 Kazee does not dispute the trial court's determinations that the relief he sought was unavailable either under WIS. STAT. § 806.07 (1999-2000)<sup>2</sup> or by means of a writ of certiorari challenging the revocation of his probation. Rather, he contends that the trial court should have construed his motion as a petition for a writ of habeas corpus challenging the legality of his detention.

¶8 Kazee's contention is flawed on at least two procedural grounds. First, at the time Kazee filed his motion, he was still serving the revoked sentence on the sexual assault conviction. Because he made no claim that his detention on that sentence was improper, the trial court could not have determined that Kazee was being detained illegally at that time. Secondly, as the State correctly points out, Kazee's failure to timely pursue an alternate avenue of relief through

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

certiorari barred subsequent use of the habeas mechanism. *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 184, 572 N.W.2d 565 (Ct. App. 1997).

¶9 Kazee's claim also lacks substantive merit. It rests on the false assumption that because the reckless endangerment sentence was imposed consecutive to the sexual assault sentence, the periods of parole must also have run consecutively. However, periods of parole on consecutive sentences are aggregated and treated as one continuous period for the purpose of parole. WIS. ADMIN. CODE § DOC 302.21(3)(b)3; *Ashford v. Division of Hearing and Appeals*, 177 Wis. 2d 34, 42, 501 N.W.2d 824 (Ct. App. 1993).

*By the Court.*—Order affirmed.

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

