

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 1, 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. 04-1156

Cir. Ct. No. 02CV010572

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**STATE OF WISCONSIN EX REL.
JOHN A. LULLOFF,**

PETITIONER-APPELLANT,

V.

DAVID SCHWARZ,

RESPONDENT-RESPONDENT.

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

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. John A. Lulloff appeals *pro se* from an order dismissing his petition for a writ of *habeas corpus*. We conclude that *habeas corpus* is an inappropriate method for challenging the revocation of his parole. Therefore, we affirm.

¶2 Lulloff was convicted of operating a vehicle while under the influence of an intoxicant as a fifth or subsequent offense. After serving part of his sentence and being released on parole, Lulloff was taken into custody for a new charge of operating a motor vehicle while under the influence of alcohol. He waived his right to a final revocation hearing.¹ His parole was revoked.

¶3 To challenge the revocation, he filed a petition for a writ of *habeas corpus*. The trial court dismissed his petition.

[H]*abeas corpus* relief is available only where the petitioner demonstrates: (1) restraint of his or her liberty, (2) which ... was imposed contrary to constitutional protections or by a body lacking jurisdiction and (3) no other adequate remedy available at law. *Habeas corpus* is not a substitute for appeal and therefore, a writ will not be issued where the “petitioner has an otherwise adequate remedy that he or she may exercise to obtain the same relief.”

State v. Pozo, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12 (citations omitted); *see also* WIS. STAT. § 974.06(8) (2001-02).² “Whether [a] writ of *habeas corpus* is available to the party seeking relief is a question of the law that we review *de novo*.” *See Pozo*, 258 Wis. 2d 796, ¶6.

¶4 The appropriate procedure for challenging a revocation decision is a timely petition for a writ of certiorari. *See State ex rel. Johnson v. Cady*, 50

¹ The record indicates that Lulloff admitted that he was operating a motor vehicle while under the influence of alcohol. In his appellate reply brief, Lulloff contends that he only admitted that he had been drinking the night before his arrest. Lulloff signed a waiver of his right to a final revocation hearing, although he claims that the agent, capitalizing on Lulloff’s poor vision, misled him to believe that he was only waiving his right to a preliminary hearing.

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Wis. 2d 540, 550, 185 N.W.2d 306 (1971). The mandatory deadline for seeking certiorari relief is forty-five days. *See* WIS. STAT. § 893.735(2). Lulloff is not entitled to the extraordinary remedy of *habeas corpus* to cure his missing the deadline for pursuing the appropriate remedy, which was certiorari. *See* § 893.735(2); *Cady*, 50 Wis. 2d at 550.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).