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**DISTRICT I**

November 18, 2025

To:

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Electronic Notice

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You are hereby notified that the Court has entered the following opinion and order:

2024AP549

State of Wisconsin ex rel. Michael P. Cotton v. Dan Cromwell  
(L.C. # 2024CV494)

Before White, C.J., Donald, and Geenen, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Michael P. Cotton, pro se, appeals the order of the circuit court denying his petition for writ of habeas corpus. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

In 2012, Cotton was convicted of two counts of first-degree sexual assault of a child under the age of thirteen and two counts of first-degree sexual assault of a child under the age of twelve, in Milwaukee County Circuit Court Case No. 2011CF71. He was sentenced to 35 years of initial confinement followed by 20 years of extended supervision. He sought postconviction relief, where he argued insufficiency of the evidence, ineffective assistance of counsel, and a speedy trial violation. The circuit court denied his postconviction motion, and this court affirmed. *See State v. Cotton*, No. 2016AP1263-CR, unpublished slip op. (WI App Aug. 29, 2017) (*Cotton I*). Cotton filed a petition for review with the Wisconsin Supreme Court, which was denied.

Cotton next filed a petition for writ of habeas corpus in federal court, raising the same arguments. The district court dismissed his petition, and the federal court of appeals denied his petition for review.

In March 2021, Cotton filed a “Motion for Writ of Mandamus, Habeas Corpus, or Other Appropriate Relief Due to Violation of ‘Class of One’ Equal Protection Rights and Substantive and Procedural Due Process Rights” in the circuit court. The circuit court denied the petition on the grounds that it had no authority to issue the writ of mandamus requested by Cotton, and that a writ of habeas corpus could not be issued since Cotton had not demonstrated that no other adequate remedy existed, such as a WIS. STAT. § 974.06 motion.<sup>2</sup>

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<sup>2</sup> We note that while Cotton’s WIS. STAT. § 974.06 motion was filed when the 2021-22 version of the statutes was in effect, the language of the statute was the same as that in the current version of the statutes.

Cotton subsequently filed a WIS. STAT. § 974.06 motion in September 2021. In that motion, he argued that his equal protection and due process rights had been violated. The circuit court denied the motion on the grounds that it was procedurally barred, pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). This court affirmed. *See State v. Cotton*, No. 2021AP1749, unpublished op. and order (WI App Sept. 13, 2022) (*Cotton II*).

Cotton filed several additional petitions for writ in the circuit court, all of which were denied. He now appeals the order denying his most recent petition, entitled “Motion for Writ of Habeas Corpus, or Other Appropriate Relief Due to Violation of ‘Class-Of-One’ Equal Protection Rights and Substantive and Procedural Due Process Rights.” In that petition, Cotton asserted the violation of his right to equal protection and due process under both the United States Constitution and the Wisconsin Constitution. The circuit court denied the petition, finding that no violations could be derived from Cotton’s arguments, and therefore he “failed to adequately demonstrate his restraint of liberty was imposed contrary to constitutional protections or by a body lacking jurisdiction.”

On appeal, Cotton first argues that the circuit court lacked jurisdiction or competency to decide his habeas petition. Subject matter jurisdiction is conferred by the Wisconsin Constitution, and thus a circuit court “is never without subject matter jurisdiction.” *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶1, 273 Wis. 2d 76, 681 N.W.2d 190. In contrast, “a court’s ‘competency,’ as the term is understood in Wisconsin, is not jurisdictional at all, but instead, is defined as ‘the power of a court to exercise its subject matter jurisdiction’ in a particular case.” *State v. Smith*, 2005 WI 104, ¶18, 283 Wis. 2d 57, 699 N.W.2d 508 (citation omitted). Put another way, “[a]lthough a circuit court may not be deprived of jurisdiction by operation of a statute, a circuit court may lack competency to render a valid order or judgment

when the parties seeking judicial review fail to meet certain statutory requirements.” *Xcel Energy Servs., Inc., v. LIRC*, 2013 WI 64, ¶28, 349 Wis. 2d 234, 833 N.W.2d 665.

However, “[n]ot every failure to comply with statutory requirements will deprive the court of competency[.]” *Id.* “Only when the failure to abide by a statutory mandate is ‘central to the statutory scheme’ of which it is a part will the circuit court’s competency to proceed be implicated.” *Id.* (citations omitted).

Pursuant to WIS. STAT. § 782.03, a prisoner filing a petition for writ of habeas corpus must do so “within the county where the prisoner is detained[.]” Here, while Cotton’s crimes were committed in Milwaukee County, he is currently incarcerated in the New Lisbon Correctional Institution, located in Juneau County. The State acknowledges that the venue requirement of § 782.03 is central to the statutory scheme and, as a result, concedes that the Milwaukee County Circuit Court lacked competency to decide Cotton’s petition.

Nevertheless, “challenges to circuit court competency may be forfeited” if they are not timely raised. *City of Eau Claire v. Booth*, 2016 WI 65, ¶1, 370 Wis. 2d 595, 882 N.W.2d 738. Whether a circuit court has lost competency, and whether any objection to competency has been forfeited, are questions of law that this court reviews de novo. *Mikrut*, 273 Wis. 2d 76, ¶7.

The State asserts that Cotton forfeited his challenge to competency by filing his petition in the wrong circuit court, and then allowing it to proceed to judgment. We agree. Furthermore, we observe that Cotton also initiated this appeal seeking review of the order by the Milwaukee

County Circuit Court.<sup>3</sup> We therefore conclude that Cotton forfeited his competency challenge. See *Booth*, 370 Wis. 2d 595, ¶1. As such, we continue our review of this matter on the merits.

“Habeas corpus provides extraordinary relief and is available only where specific factual circumstances are present.” *State ex rel. Fuentes v. Court of Appeals*, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999). As such, relief by writ of habeas corpus “is available only where the petitioner demonstrates: (1) restraint of his or her liberty, (2) which restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction and (3) no other adequate remedy available at law.” *State v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12.

In our review of a circuit court order denying a petition for writ of habeas corpus, factual findings will not be reversed unless clearly erroneous, but whether the writ is available is a question of law that we review independently. *Id.*, ¶6. We also review independently whether a writ petition is procedurally barred. *State ex rel. Krieger v. Borgen*, 2004 WI App 163, ¶5, 276 Wis. 2d 96, 687 N.W.2d 79.

Cotton argues that the circuit court erred in denying his writ petition because it did not explain its decision. On the contrary, the circuit court did in fact explain its decision denying Cotton’s writ petition, based on the standard set forth in *Pozo*. The circuit court recognized that Cotton met the first and third requirements: that he is restrained of his liberty, and has exhausted his other remedies available at law. See *Pozo*, 258 Wis. 2d 796, ¶8. Turning to the second

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<sup>3</sup> We further note that the relief Cotton is seeking by raising this challenge is unclear. In his brief, he states that this court should “reverse the order,” but he also states that he requests this court to “direct the dismissal of the proceeding.” As we stated, Cotton initiated this appeal; he could therefore have requested to voluntarily dismiss it. See WIS. STAT. RULE 809.18.

requirement—that his restraint was imposed by a tribunal lacking jurisdiction or contrary to constitutional protections—the circuit court found that no violations of the United States Constitution or Wisconsin Constitution could be derived from Cotton’s arguments, thus finding the petition to be without merit.

Cotton also argues that the circuit court “failed to examine the relevant facts and law” in its decision denying his petition. Cotton appears to be referring to “facts and law” relating to his convictions, arguing that there was insufficient evidence to support his convictions and that his first postconviction motion filed in this matter was improperly decided. Cotton seems to argue that the circuit court should have granted his petition based on those grounds.

However, a sufficiency of the evidence claim was previously raised in Cotton’s first postconviction motion. It was fully litigated, and affirmed by this court in *Cotton I*. That claim is therefore procedurally barred. See *Pozo*, 258 Wis. 2d 796, ¶9 (explaining that a petitioner may not assert a claim that was previously litigated in a prior appeal or postconviction motion).

Furthermore, the claims Cotton raises in his petition regarding violations of his equal protection and due process rights appear to have been raised in his WIS. STAT. § 974.06 motion. We rejected those claims in *Cotton II* as procedurally barred, because Cotton failed to provide a sufficient reason for failing to raise them in his first postconviction motion, which is necessary to “escape the procedural bar of *Escalona-Naranjo*.” *Cotton II*, No. 2021AP1749 at 2-3. In the same vein, Cotton may not raise those same claims in a habeas petition without a valid reason for not raising them in his first postconviction motion. See *Pozo*, 258 Wis. 2d 796, ¶9 (discussing that a petition for writ of habeas corpus will not be granted where “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”). Cotton provides no reason for failing to raise these claims in his first postconviction motion. *See id.*

Furthermore, even without a procedural bar, we find Cotton’s claims to be without merit. As discussed above, we reject his claims regarding the circuit court’s lack of jurisdiction, and he forfeited his challenge of its competency. Furthermore, his claims that his constitutional rights were violated are based on arguments relating to the sufficiency of the evidence at his trial, a claim we previously rejected in *Cotton I*. *See Pozo*, 258 Wis. 2d 796, ¶8.

“We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. A defendant may not continue to rehash claims that were previously litigated in other postconviction proceedings. Therefore, we conclude that the circuit court properly denied Cotton’s petition for writ of habeas corpus.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*