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DISTRICT I

July 14, 2026

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Anthony Hoskins
2544 N. 46th Street
Milwaukee, WI 53210

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

2024AP2279

State of Wisconsin v. Anthony Hoskins (L.C. # 2017CF4200)

Before Donald, C.J., Colón, P.J., and Geenen, J.

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).

Anthony Hoskins appeals from an order dismissing his postconviction motion filed pursuant to WIS. STAT. § 974.06 (2023-24)¹ on the grounds that he was no longer in custody when he filed the motion, as required under the statute. 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. We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Hoskins was convicted in April 2018 of soliciting prostitutes after entering a no contest plea, and sentenced in June 2018. The circuit court imposed a five-year sentence, but stayed the sentence and placed Hoskins on probation for three years. Hoskins successfully completed his probation and was discharged on June 14, 2021.

Hoskins filed the postconviction motion underlying this appeal in October 2024. In that motion, he claimed that his plea was not knowing, intelligent, and voluntary due to the ineffective assistance of his trial counsel. The circuit court dismissed the motion citing lack of subject matter jurisdiction due to Hoskins' discharge from probation, as WIS. STAT. § 974.06 requires that a defendant be “in custody under sentence” at the time the motion is filed. *See* § 974.06(1). This appeal follows.

“A circuit court’s ability to exercise its subject matter jurisdiction in individual cases ... may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction,” resulting in “a loss of the circuit court’s competency to adjudicate the particular case before the court.” *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶2, 9, 273 Wis. 2d 76, 681 N.W.2d 190. Whether the circuit court has lost competency is a question of law that we review de novo. *Id.*, ¶7.

Under WIS. STAT. § 974.06, “a prisoner in custody under sentence of a court ... may move the court which imposed the sentence to vacate, set aside or correct the sentence” based on claims relating to constitutional or jurisdictional issues. Sec. 974.06(1). This court has previously concluded that a defendant who files a § 974.06 motion after being discharged from probation does not satisfy the statutory “prerequisite[]” of being “in custody under sentence of a court” within the meaning of the statute. *State v. Bell*, 122 Wis. 2d 427, 431, 362 N.W.2d 443

(Ct. App. 1984); *see also State v. Theoharopoulos*, 72 Wis. 2d 327, 329, 240 N.W.2d 635 (1976) (holding that because the defendant’s § 974.06 motion was filed after he had been discharged from supervision and custody, he was not, “as is required by [§] 974.06(1), ‘in custody under sentence of a court’” and, as a result, the circuit court did not have jurisdiction).²

Therefore, because Hoskins filed his WIS. STAT. § 974.06 motion after being discharged from probation, and he was no longer in custody as required by that statute, the circuit court did not have competency to hear his motion. *See Bell*, 122 Wis. 2d at 431. As such, the motion was properly dismissed. *See id.* Accordingly, we affirm.

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.

Samuel A. Christensen
Clerk of Court of Appeals

² Older cases often made reference to courts lacking subject matter jurisdiction when statutory mandates were not met; however, this actually refers to the circuit court’s competency, a distinct concept. *State v. Minniecheske*, 223 Wis. 2d 493, 497, 590 N.W.2d 17 (Ct. App. 1998). Subject matter jurisdiction is conferred by the Wisconsin Constitution, and therefore a circuit court “is never without subject matter jurisdiction.” *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶1, 8, 273 Wis. 2d 76, 681 N.W.2d 190. In contrast, the “failure to comply with a statutory mandate pertaining to the exercise of subject matter jurisdiction may result in a loss of the circuit court’s competency to adjudicate the particular case before the court.” *Id.*, ¶9. Put another way, the competency of the court “addresses its ability to undertake a consideration of the specific case or issue before it. The legislature confers a circuit court’s lesser powers, otherwise characterized as the court’s ‘competency.’” *Minniecheske*, 223 Wis. 2d at 497-98 (citation omitted).