

STATE OF WISCONSIN
IN THE SUPREME COURT

WILLIAM J. LEE,
PETITIONER,

FILED

MAR 17 2014

CLERK OF SUPREME COURT
OF WISCONSIN

-V-

CASE No. 02-CF-886

PAUL KEMPER, WARDEN
RACINE CORRECTIONAL INSTITUTION
POST OFFICE BOX 900
STURTEVANT, WISCONSIN 53177-0900,
RESPONDENT.

MOTION TO BYPASS COURT OF APPEALS

TO: DIANE M. FREMGEN
CLERK OF SUPREME COURT
110 EAST MAIN STREET, SUITE 215
POST OFFICE BOX 1688
MADISON, WISCONSIN 53701-1688

NOW COMES WILLIAM J. LEE, A PRO SE LITIGANT, AND MOVE THIS SUPREME COURT PURSUANT TO WIS. STAT. § 809.60 (PETITION TO BYPASS COURT OF APPEALS); AND § 808.05(3) (ON THE COURT'S OWN MOTION) TO GRANT BYPASS AND ALLOW THIS MATTER TO BE HEARD BY THE SUPREME COURT. THE REASONS JUSTIFYING THE BYPASS ARE AS FOLLOWS:

¶1. IN OCTOBER OF 2008, AFTER CONVICTION AND SENTENCING, WHICH CONSISTED OF INITIAL CONFINEMENT AND EXTENDED SUPERVISION. A NOTICE OF INTENT TO APPEAL WAS FILED ON MARCH 18, 2009, AND WAS

LATER EXTENDED TO APRIL 8, 2009. ON APRIL 27, 2009, APPELLATE — COUNSEL THERESA J. SCHMIEDER OF GREEN BAY, WISCONSIN WAS APPOINTED TO REPRESENT PETITIONER ON DIRECT APPEAL. FOR ALMOST FIVE YEARS NO MOTIONS OR APPEAL WAS FILED ON BEHALF OF PETITIONER BY COUNSEL. No VISITS OR PHONE CALLS WERE MADE BETWEEN COUNSEL AND PETITIONER, IT WAS COUNSEL WHO REFUSED TO COMMUNICATE WITH THE PETITIONER FOR THE APPROXIMATE FOUR YEARS OF TOTAL ABANDONMENT. IN APRIL OF 2013 THIS PETITIONER FILED A WRIT OF HABEAS CORPUS WITH BOTH THIS SUPREME COURT AND THE CIRCUIT COURT SEEKING RELEASE FROM ILLEGAL RESTRAINT DUE TO BEING DENIED HIS DIRECT APPEAL AS A RESULT OF COUNSEL'S — ABANDONMENT OF HIS CASE. FROM APRIL 12, 2013, UNTIL FEBRUARY 7, 2014, CIRCUIT COURT KENDALL M. KELLEY REFUSED TO HEAR PETITIONER'S WRIT OF HABEAS CORPUS PETITION CHALLENGING APPELLATE COUNSEL'S ACT OF ABANDONMENT FOR APPROXIMATELY FOUR AND A HALF YEARS. JUDGE — KENDALL M. KELLEY HELD THREE HEARING FOR COUNSEL TO ATTEMPT TO GET PETITIONER TO AGREE TO ALLOW HER TO FILE A LATE NO MERIT REPORT, AS OPPOSE TO ALLOWING PETITIONER TO ADDRESS COUNSEL'S ABANDONMENT OF THE DIRECT APPEAL. JUDGE KENDALL KELLEY SUSPENDED PETITIONER'S ABILITY AND RIGHT TO FILE A WRIT OF HABEAS CORPUS IN VIOLATION OF WISCONSIN CONSTITUTION ARTICLE 1, SECTION 8(4), WHEN KELLEY, FOR FOR TEN MONTHS REFUSED TO HEAR THE WRIT OF HABEAS CORPUS, YET HE REPEATEDLY INSISTED APPELLATE COUNSEL AND DEFENDANT TRY ANF FIND ANOTHER METHOD OF DEALING WITH HER MANY YEARS OF ABANDONMENT AND FAILUE TO APPEAL PETITIONER'S CONVICTION. THEN KELLEY ALLOWED THE APPELLATE COUNSEL TO FILE WITH THE COURT OF APPEALS TO TRY TO GET THE COURT OF APPEALS TO ALLOW HER TO FILE A LATE NO MERIT SO THAT KELLEY DID NOT HAVE TO RULE ON THE WRIT OF HABEAS CORPUS. FINALLY,

THE HISTORY OF WHAT HAPPENED IN THE COURT OF APPEALS AND WHY THIS COURT DISMISSED THE PENDING HABEAS CORPUS AS MOOT ARE ATTACHED IN THE DECISIONS AND ORDERS BY THE COURT. PETITIONER BELIEVES THAT HIS CASE MANDATES BEING HEARD ON A WRIT OF HABEAS CORPUS, AND NOT A POSTCONVICTION MOTION AS SUGGESTED BY THE COURT OF APPEALS, AND BY JUDGE KENDALL KELLEY. IT IS ASKED THAT THIS SUPREME COURT NOW ALLOW THIS PETITIONER TO BYPASS THE COURT OF APPEALS, TO BE HEARD BY THIS COURT ON THE COURT'S ORIGINAL JURISDICTION. THE COURT OF APPEALS ACTION TO EXTEND THE TIME FOR FILING A LATE NO MERIT BRIEF IS IN VIOLATION OF THIS COURT, THIS SUPREME COURT'S RULING IN EVANS, 682 N.W.2D 784, WHICH PROHIBITED JUDGES FROM ALLOWING THE DEFENDANT'S ATTORNEY TO FILE ASKING PERMISSION TO EXTEND THE TIME IN WHICH TO FILE A NO MERIT BRIEF. THIS COURT RULED THAT THE WRIT OF HABEAS CORPUS WAS THE APPROPRIATE AVENUE, AND NOT WIS. STATS. § 809.82(2). THE COURT OF APPEALS JUDGE, A SINGLE JUDGE VIOLATED THAT RULE IN ORDER TO UNDERMINE THIS PETITIONER'S ABILITY TO USE THE WRIT OF HABEAS CORPUS. THE COURT OF APPEALS JUDGE'S CONDUCT HAS BORDERED ON JUDICIAL MISCONDUCT. THE ONLY REMEDY PETITIONER NOW HAVE IS FOR THIS COURT TO REOPEN CASE No. 2013AP823 TO ALLOW THIS PETITIONER TO BE HEARD ON HIS ORIGINAL WRIT SO THAT HE NOT BE UNDERMINDED BY THE BAD ACTS OF TWO JUDGES DELIBERATELY ACTING TO SUSPEND THE WRIT IN VIOLATION OF WIS. CONST. ART 1, SEC. 8.(4).

IT IS THEREFORE REQUESTED THAT THE SUPREME COURT ISSUE AN ORDER DIRECTING THAT CASE No. 2013AP823-W.

IT IS FURTHER REQUESTED THAT THE RESPONDENT BE REQUIRED TO

FILE A BRIEF SHOWING WHY APPELLATE COUNSEL NOT BE HELD ACCOUNTABLE FOR HER ACTIONS OF ABANDONING THIS PETITIONER FOR ALMOST FIVE YEARS WITHOUT FILING AN APPEAL OR A TIMELY NO MERIT AS REQUIRED BY LAW;

IT IS FURTHER REQUESTED THAT PETITIONER BE RELEASED FROM HIS ILLEGAL RESTRAINT, AND THAT AN ORDER BE ISSUED REQUIRING RESPONDENT RESPOND AND STATE WHY PETITIONER NOT BE RELEASED.

DATED THIS 7th DAY OF March 2014.

SUBMITTED BY:

William Lee
WILLIAM J. LEE
PRO SE LITIGANT.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH IV

BROWN COUNTY

STATE OF WISCONSIN,

Plaintiff,

DECISION AND ORDER

v.

Case No. 02-CF-886

WILLIAM J. LEE,

Defendant.

NATURE OF THE CASE

Before the Court is a Petition for Writ of Habeas Corpus filed by Defendant William J. Lee ("Lee") on April 12, 2013 (the "Petition"). Also before the Court is a January 27, 2014 letter from Lee requesting that the Court provide him with a copy of the hearing held on September 6, 2013 and September 11, 2013. Based on the following reasons, the Petition and request for transcripts will both be **DENIED**.

ANALYSIS

In the Petition, Lee seeks immediate release from his prison sentence based upon allegations of ineffective assistance of appellate counsel. Lee asserts that, despite never having met with him to discuss potential meritorious issues for an appeal, his appellate counsel closed his appeal in Brown County case number 02-CF-886 without his authorization. Lee also sets forth several issues that he believes appellate counsel should have raised on appeal.

Since the Petition was filed, the Court has engaged in correspondence with Lee, his appellate counsel, and the State Public Defender's Officer to attempt to arrive at a point where it would be appropriate for the Court to address the motion. Specifically, at one point, appellate counsel was going to file a no merit report so that Lee would then have the opportunity to submit

his own position the Court of Appeals would then have the opportunity to consider the merits of any potential appellate issues.

The Court was under the impression, at one point, that Lee was in agreement with appellate counsel filing a no merit report. However, the Court has now received notice that the Court of Appeals would not pursue the no merit report filed by appellate counsel based upon correspondence from Lee. Notably, on December 27, 2013, the Court of Appeals extended the time for Lee to file a postconviction for 60 days from the date of the order. Therefore, Lee has until February 25, 2014 to file a postconviction motion with this Court, which if decided contrary to Lee's interest, he could then appeal to the Court of Appeals.

Habeas corpus is an extraordinary writ and is available to a petitioner only under limited circumstances. State ex rel. Haas v. McReynolds, 2002 WI 43, ¶ 12, 252 Wis. 2d 133, ¶ 12, 643 N.W.2d 771, ¶ 12. An individual seeking habeas corpus relief must demonstrate: (1) that his or her liberty is restrained; (2) that the restraint was imposed without jurisdiction or contrary to constitutional protections; and (3) that there was no other adequate remedy available in the law.

Id.

The Court cannot grant Lee's petition because he cannot demonstrate that he has no other adequate remedy available at law. Specifically, Lee is able to challenge his convictions in case number 02-CF-886 by filing a postconviction motion with this Court and, if necessary, an appeal with the Court of Appeals. Consequently, the Petition will be denied.

The Court will also deny Lee's request for transcripts from the September 6, 2013 and September 11, 2013 hearings. Those hearings involved determining whether: (1) appellate counsel would file a motion to extend the time limits for filing an appeal and no merit report; or (2) whether appellate counsel would withdraw and Lee would proceed pro se because the State

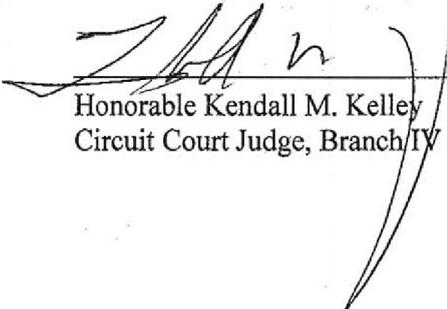
Public Defender's Officer would not appoint successor counsel. Therefore, those hearings have no bearing on any issues Lee would need to address in regard to challenging the validity of his criminal convictions. The Court will not expend county resources to supply Lee with unnecessary transcripts.

CONCLUSION & ORDER

Based on the foregoing, it is hereby **ORDERED** that Lee's Petition for Writ of Habeas Corpus and request for transcripts are **DENIED**.

Dated at Green Bay, Wisconsin, this 7th day of February, 2014

BY THE COURT:


Honorable Kendall M. Kelley
Circuit Court Judge, Branch IV



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

April 22, 2013

To:

Hon. Kendall M. Kelley
Circuit Court Judge
Brown County Courthouse
100 S. Jefferson St, PO Box 23600
Green Bay, WI 54305-3600

Jason B. Beck
Clerk of Circuit Court
Brown County Courthouse
100 S. Jefferson St, PO Box 23600
Green Bay, WI 54301-3600

Kevin C. Potter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

William J. Lee 229110
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2013AP829-W

State of Wisconsin ex rel. William J. Lee v. Paul Kemper
(L.C. # 2002CF886)

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

William J. Lee has filed a petition for a Writ of Habeas Corpus. The petition is not verified as required by WIS. STAT. § 782.04.

IT IS ORDERED that the petition is stricken.

Diane M. Fremgen
Clerk of Court of Appeals



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
 P.O. BOX 1688
 MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
 TTY: (800) 947-3529
 Facsimile (608) 267-0640
 Web Site: www.wicourts.gov

DISTRICT III

June 24, 2013

To:

Hon. Kendall M. Kelley
 Circuit Court Judge
 Brown County Courthouse
 100 S. Jefferson St, PO Box 23600
 Green Bay, WI 54305-3600

Jason B. Beck
 Clerk of Circuit Court
 Brown County Courthouse
 100 S. Jefferson St, PO Box 23600
 Green Bay, WI 54301-3600

Kevin C. Potter
 Assistant Attorney General
 P.O. Box 7857
 Madison, WI 53707-7857

Gregory M. Weber
 Assistant Attorney General
 P.O. Box 7857
 Madison, WI 53707-7857

William J. Lee 229110
 Racine Corr. Inst.
 P.O. Box 900
 Sturtevant, WI 53177-0900

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

2013AP829-W

State of Wisconsin ex rel. William J. Lee v. Paul Kemper, Warden
 (L.C. # 2002CF886)

Before Hoover, P.J.

By order dated April 22, 2013, this court struck William Lee's petition for a writ of habeas corpus on the ground that it was not verified as required by WIS. STAT. § 782.04. Lee has filed an untimely motion for reconsideration and a "statement of verification." Verification under § 782.04 requires submission of a sworn, notarized petition. The "statement of verification" is not sworn or notarized. In any event, the motion for reconsideration was not filed within twenty days of this court's order striking the petition.

IT IS ORDERED that the motion for reconsideration is denied.

Diane M. Fremgen
 Clerk of Court of Appeals



OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

October 17, 2013

To:

Hon. Kendall M. Kelley
Brown County Circuit Court Judge
P.O. Box 23600
Green Bay, WI 54305-3600

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jason B. Beck
Brown County Clerk of Circuit Court
P.O. Box 23600
Green Bay, WI 54301-3600

William J. Lee 229110
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

Kevin C. Potter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

No. 2013AP823-W Lee v. Kemper L.C.#2002CF886

William Lee, pro se, has filed a petition for writ of habeas corpus;

IT IS ORDERED that the respondent, Paul Kemper, file a response to the petition for writ of habeas corpus on or before October 31, 2013.

Diane M. Fremgen
Clerk of Supreme Court



OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

November 26, 2013

To:

Hon. Kendall M. Kelley
Brown County Circuit Court Judge
P.O. Box 23600
Green Bay, WI 54305-3600

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jason B. Beck
Brown County Clerk of Circuit Court
P.O. Box 23600
Green Bay, WI 54301-3600

William J. Lee 229110
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

Kevin C. Potter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

No. 2013AP823-W

Lee v. Kemper L.C.#2002CF886

On April 10, 2013, the petitioner, William J. Lee, *pro se*, filed a petition for writ of habeas corpus. On October 17, 2013, this court ordered the respondent, Paul Kemper, to file a response to the petition for writ of habeas corpus. On October 29, 2013, the respondent filed his response.

Meanwhile, in the court of appeals, counsel for Mr. Lee filed a motion for extension of time to file a no-merit report on Mr. Lee's behalf. Case No. 2013XX1302-CR, *State v. Lee*. The court of appeals granted this motion on October 7, 2013.

On October 11, 2013, Mr. Lee filed a *pro se* motion in opposition to the motion for extension of time and, on November 12, 2013, Mr. Lee filed a *pro se* motion seeking discharge of his appellate counsel.

Page Two

November 26, 2013

No. 2013AP823-W

Lee v. Kemper L.C.#2002CF886

As the respondent notes in the response filed in this court, the court of appeals' decision in Case No. 2013XX1302-CR, *State v. Lee*, effectively renders the petition before this court moot.

Therefore,

IT IS ORDERED that the petition for writ of habeas corpus is dismissed as moot.

IT IS FURTHER ORDERED that the two *pro se* documents filed by Mr. Lee on October 11, 2013 and November 12, 2013, respectively, be placed in the file for Case No. 2013XX1302-CR, *State v. Lee*, to ensure the court of appeals is aware of Mr. Lee's filings.

Diane M. Fremgen
Clerk of Supreme Court



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

December 10, 2013

To:

Jason B. Beck
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54301-3600

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Theresa J. Schmieder
Theresa J. Schmieder Attorney at Law
P.O. Box 697
Green Bay, WI 54305

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

William J. Lee 229110
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2013AP2676-CRNM State of Wisconsin v. William J. Lee (L.C. # 2002CF886)

Before Hoover, P.J.

William Lee has filed what we construe as a motion to discharge appellate counsel, strike the no merit notice of appeal and pursue the appeal or postconviction motion *pro se*. In his motion, Lee confirms that he understands the consequences of discharging his counsel so that he can proceed *pro se*. Specifically, he acknowledges that he will be responsible for following all the rules of appellate procedure; that no attorney will be appointed to represent him should he subsequently decide that discharging counsel and proceeding *pro se* was ill-advised; that he is responsible for timely filing documents, motions and briefs, including the appropriate number of

briefs; and that he can hold nobody else responsible for any shortcoming he may have as a result of proceeding on his own.

Before we rule on the motion, Lee must inform this court whether he wishes to proceed to briefing in the present appeal or return to the circuit court with a postconviction motion. If it is the latter, the present appeal will be dismissed without prejudice and we will extend the time for Lee to file his pro se postconviction motion.

IT IS ORDERED that no later than January 3, 2014, Lee shall file the response required by this order.

IT IS FURTHER ORDERED that the motion to discharge appellate counsel, strike the no-merit notice of appeal and pursue the appeal or postconviction motion pro se will be held in abeyance pending Lee's response.

Diane M. Fremgen
Clerk of Court of Appeals

WISCONSIN CORRECTIONAL FACILITY
RACINE CORRECTIONAL INSTITUTION

Name WILLIAM J. LEE

#229110

Unit JEFFERSON EAST

P.O. BOX 900
STURTEVANT, WI 53177-0900

Hasler

03/14/2014

US POSTAGE

\$02.17⁰



ZIP 53177
011D11631136



Ms. DIANE FREMGEN
CLERK OF SUPREME COURT
110 EAST MAIN STREET, SUITE 215
POST OFFICE BOX 1688
MADISON, WISCONSIN 53701-1688