

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 2, 2004

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. 04-1436
STATE OF WISCONSIN**

Cir. Ct. No. 91CF000567

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DONALD HARRIS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Donald Harris, pro se, appeals the circuit court's order denying his petition for a writ of habeas corpus. Harris argues: (1) that his sentence should not have been increased after revocation of his probation; (2) that the circuit court misused its discretion in sentencing him to fifty-seven years of imprisonment after revocation; (3) that the sentence he received after revocation

was unduly harsh and should be barred by “estoppel judgment doctrine;” (4) that he received ineffective assistance of counsel when he entered his plea in 1991; and (5) that he received ineffective assistance of counsel during his revocation hearing held April 9, 2003. We affirm.

¶2 It is well established that habeas corpus “is not a substitute for [an] 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 (quoting *State ex rel. Haas v. McReynolds*, 2002 WI 43, ¶14, 252 Wis. 2d 133, 643 N.W.2d 771). It is also well established that habeas corpus relief is available only when a petitioner demonstrates that he or she has been restrained of liberty and the “restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction.” *Id.*

¶3 Harris could have filed a direct appeal from his 1991 conviction, but he chose not to do so. He could also have filed a petition for a writ of certiorari for review of the revocation decision made in 2003 and a direct appeal from the judgment imposing sentence after revocation but, again, he did not. Because he had other adequate remedies available at law, which he chose not to pursue, his petition for a writ of habeas corpus claims was properly denied. *Id.*

¶4 Harris’s claims are also barred because they do not raise constitutional or jurisdictional claims, except for his argument that he received ineffective assistance of counsel during his 1991 plea and during his 2003 sentencing after revocation. As for his ineffective assistance of counsel claims, Harris did not raise them in the circuit court, so we will not consider them now. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (explaining

that appellate courts will not usually review issues raised for the first time on appeal).

By the Court.—Order affirmed.

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

