

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 2008

David R. Schanker
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. 2008AP388-CR

Cir. Ct. No. 2000CF1325

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LEE PARRETT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MARTIN J. DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lee Parrett appeals from the order of the circuit court that denied his petition to commute his sentence under WIS. STAT. § 973.13

(2005-06).¹ He argues that his sentence was illegal because he was charged with escape for failing to return after work release. Because we conclude that Parrett was properly charged with escape, we affirm.

¶2 In 2000, Parrett failed to return to the Milwaukee House of Correction where he was serving a term of probation on work release. He was subsequently charged with escape.² He did not appeal from his conviction. In 2007, he filed a motion for postconviction relief. The circuit court denied the motion, and we affirmed. In 2008, Parrett filed the petition that is the subject of this appeal. He argued that he was illegally charged with escape because at the time he was serving jail time as a condition of probation. The circuit court denied the petition, Parrett moved for reconsideration, and the circuit court denied the motion as well.

¶3 In this appeal, Parrett renews his argument that because he was serving jail time as a condition of probation, he cannot be charged with escape, citing to *State v. Schaller*, 70 Wis. 2d 107, 233 N.W.2d 416 (1975). The State responded that this argument should be barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994), because Parrett has not offered a sufficient reason for failing to raise the argument in his previous motion for postconviction relief. We conclude, however, that under WIS. STAT. § 973.13, “all sentences imposed in excess of their maximum term are void.” See *State v. Flowers*, 221 Wis. 2d 20, 29, 586 N.W.2d 175 (Ct. App. 1998) (emphasis in

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² He was also charged with two counts of sexual assault of a child.

Flowers). To allow *Escalona* to bar a claim that the defendant received an illegal sentence “would raise the specter of a defendant being incarcerated for a term (possibly years) in excess of that presented by law simply because he or she failed to raise the issue earlier.” *Id.* Consequently, we will address the merits of Parrett’s argument.

¶4 We also conclude, however, that a person who does not return from work release may be charged with escape under WIS. STAT. § 946.42. *See State v. Smith*, 214 Wis. 2d 541, 544-45, 571 N.W.2d 472 (Ct. App. 1997). Because, Parrett was properly charged with escape, his sentence is not illegal, and he is not entitled to have it commuted. For the reasons stated, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

