COURT OF APPEALS
DECISION
DATED AND FILED

November 9, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-3528 **Cir. Ct. No. 03CV009521**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN EX REL. MARK J. SANTNER,

PETITIONER-APPELLANT,

V.

DEBBIE MITCHELL, KARL HELD, EURIAL JORDAN, RONALD MALONE AND MATTHEW J. FRANK,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed*.

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

¶1 PER CURIAM. Mark J. Santner, *pro se*, appeals from an order dismissing his petition seeking a writ of *habeas corpus*. He claims that the trial court should not have dismissed his petition, that he was denied equal protection and due process, and that increasing his sentence while he was already serving it

violated double jeopardy. Because the facts and circumstances under this case do not satisfy the standard required to maintain a writ of *habeas corpus*, we affirm.

¶2 The crux of this appeal is Santner's challenge to the Department of Corrections' jurisdiction over him with respect to a parole hold in a case he claims he was discharged from. He suggests that he was discharged from case #99CT3616 before revocation and yet, this case was added to his felony prison structure. As the State points out, Administrative Law Judge Kathleen R. Kalashian sets forth a well-reasoned analysis rejecting his jurisdictional claim:

> At the beginning of the hearing Mr. Santner stipulated that he committed all 8 allegations in violation of his rules. Additionally, Mr. Santner stipulated that revocation was appropriate but challenged jurisdiction on Case #98CF308 and Case #99CT3616, arguing that these cases have discharged.
>
> ….
>
> With regard to the jurisdictional argument, I have reviewed the documents submitted by [Santner's Attorney], and I am satisfied that Mr. Santner is still on parole supervision on all three cases. Mr. Santner was originally placed on probation on case #98CF308. However, probation was subsequently revoked and a revocation order and warrant … dated February 24, 2000 indicates that Mr. Santner was to be returned to court for sentencing. While the actual sentencing date is not in the record, it is clear that sometime after February of 2000, Mr. Santner received a two year prison sentence. In the interim between when the Department was seeking revocation of Mr. Santner's case and when he was ultimately sentenced to the two years in prison, Mr. Santner was also convicted of operating after revocation in case #99CT3616 and sentenced to six months in the House of Correction. As a result, Mr. Santner's consecutive cases were aggregated and he served approximately 12 months in jail since he was paroled on February 19, 2001. The 12 months that Mr. Santner served in jail reflect the period of time Mr. Santner would have served in custody on a two-year sentence and a consecutive four-year sentence, minus credit and as a result of good time. Accordingly, Mr. Santner served approximately 12 months in jail on a 28-month consecutive aggregated

> sentence and it is clear that he still has remaining on those two sentences the amount of time reflected in the registrar's document ….

¶3 As the ALJ's decision explains, because Santner was serving consecutive sentences, case #99CT3616 had not been completed. The consecutive nature of the sentence resulted in his sentences being treated as one continuous sentence for the purpose of parole. Thus, Santner is simply wrong on a basic fact.

¶4 Now, as far as his petition for writ of *habeas corpus*, the law is clear:

> [*H]abeas corpus* relief 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. *Habeas corpus* is not a substitute for 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 (citations omitted). Whether a party is entitled to a writ of *habeas corpus* presents a question of law that we review independently. ***Id.***, ¶6. Santner does not satisfy the third element of this standard. He had an opportunity to file an administrative appeal and certiorari claim. In fact, he suggests in his reply brief that he has a parallel certiorari action currently pending. Santner had an adequate remedy at law. He was not in need of extraordinary relief and therefore, seeking relief pursuant to the *habeas* writ was erroneous as a matter of law. We affirm the decision of the trial court.

By the Court.—Order affirmed.

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