

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 10, 2009

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. 2007AP2244

Cir. Ct. No. 2007CV9020

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. BOBBY ARTHUR,

PETITIONER-APPELLANT,

v.

**WISCONSIN STATE AND MICHAEL THURMER, WARDEN, WAUPUN
CORRECTIONAL INSTITUTION,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Bobby Arthur appeals from an order dismissing his petition for a writ of habeas corpus. The issue is whether Arthur is entitled to habeas corpus relief to litigate his claim of newly discovered evidence of

extraneous information. We conclude that habeas corpus is an inappropriate remedy for the relief Arthur seeks, and that this same issue has been previously litigated, also barring its re-litigation. Therefore, we affirm.

¶2 A jury found Arthur guilty of one count of child enticement, two counts of second-degree sexual assault, one count of exposing a child to harmful material, and one count of false imprisonment. The trial court imposed a seventy-five-year aggregate sentence, comprised of forty-five- and thirty-year aggregate respective periods of initial confinement and extended supervision. Arthur sought postconviction relief, which the trial court denied. This court affirmed the judgment of conviction and postconviction order, rejecting Arthur's claims of Double Jeopardy, insufficient evidence, ineffective assistance of counsel, an excessive sentence, and for a new trial for the extraneous information brought into the jury room. *See State v. Arthur*, No. 2002AP1388-CR, unpublished slip op., ¶1 (WI App Apr. 15, 2003).

¶3

[*H*]abeas corpus relief is available only where the petitioner demonstrates: (1) restraint of his or her liberty, (2) which [] 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); *see also* WIS. STAT. § 974.06(8) (2005-06).¹ "Whether [a] writ of

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

habeas corpus is available to the party seeking relief is a question of the law that we review *de novo*.” See *Pozo*, 258 Wis. 2d 796, ¶6.

¶4 Arthur was convicted and is imprisoned “by virtue of [a] final judgment or order of a[] competent tribunal of civil or criminal jurisdiction.” WIS. STAT. § 782.02. Habeas corpus is therefore an improper remedy for the relief he seeks.

¶5 Moreover, Arthur has already availed himself of another remedy at law, also precluding habeas corpus relief. Arthur’s substantive claim for habeas corpus relief has already been litigated. Arthur sought a new trial because an alternate juror brought a city map into the jury room that was seen by another juror, who ultimately served on the jury that found Arthur guilty. The trial court held an evidentiary hearing at which most of the jurors testified. The trial court ultimately rejected that issue, ruling that, although extraneous information (the city map) had been brought into the jury room, that information and its use had not been prejudicial to Arthur. This court affirmed that ruling, and explained the trial court’s rationale and its own in rejecting that claim. See *Arthur*, No. 2002AP1388-CR, unpublished slip op., ¶¶20-25.

¶6 Notwithstanding the impropriety of habeas corpus relief, this claim has been fully litigated. It therefore will not be re-litigated. See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (we will not revisit previously rejected issues). We independently conclude that habeas corpus relief is not the applicable remedy for the relief Arthur seeks. See *Pozo*, 258 Wis. 2d 796, ¶6. We therefore affirm the trial court’s dismissal of Arthur’s petition for a writ of habeas corpus.

By the Court.—Order affirmed.

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

