

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 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. 2007AP2960

Cir. Ct. No. 2000CF352

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LARRY L. MEDDAUGH,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Wood County:
EDWARD F. ZAPPEN, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Larry Meddaugh appeals an order that denied his petition for a writ of habeas corpus. We affirm, although on partially different grounds than those cited by the circuit court.

BACKGROUND

¶2 In 2001, Meddaugh entered guilty pleas on two counts of second-degree sexual assault of a child. The circuit court imposed and stayed an eight-year prison sentence on the first count and withheld sentence on the second count, subject to a fifteen-year term of probation.

¶3 In early 2006, Meddaugh's probation agent received information that Meddaugh had broken a number of his probation rules, including drinking alcohol on a regular basis, breaking curfew, having contact with his victim, continuing a relationship with the victim's mother, who was his ex-girlfriend, and asking a friend of the victim to strip for him for money. When confronted by his agent, Meddaugh verbally admitted to breaking curfew, buying lottery tickets, being in his victim's apartment without her knowledge, continuing a relationship with the victim's mother, and asking the friend, who worked as an exotic dancer, to strip for him for money, and he provided a written statement to that effect. He denied any drug usage, however.

¶4 The agent served Meddaugh with revocation papers on Count 1 with the stayed sentence, but then offered him an alternative to revocation which would consist of withdrawing the revocation proceeding on Count 1, serving revocation papers on Count 2 with the withheld sentence instead, and amending the Judgment of Conviction on Count 2 to include eleven months of conditional jail time in lieu of revocation. The agent advised Meddaugh that he should not agree to the deal if there was any chance that further violations could be uncovered. Meddaugh denied any further violations and signed the ATR agreement, formally admitting the charged violations and agreeing to the eleven months of conditional jail time.

¶5 The following day, the agent learned that Meddaugh's urine had tested positive for cannabinoids. The agent treated this as a forth violation and sought revocation on Count 2. An administrative judge revoked Meddaugh's probation following a hearing at which Meddaugh was represented by counsel, and the Division of Hearings and Appeals affirmed the revocation on May 30, 2006. The circuit court sentenced Meddaugh to seven years in prison.

¶6 On October 4, 2006, Meddaugh filed a petition for a writ of habeas corpus seeking to challenge the revocation of his probation on the grounds that: (1) the Department had failed to conduct a preliminary hearing; (2) the Department had improperly relied on hearsay evidence; (3) the Department had coerced him into signing the ATR agreement and then used it to incriminate him; (4) the Department had failed to follow the proper procedures for drug testing; (5) the Department had lacked jurisdiction to revoke his probation after the court had already amended the judgment of conviction; and (6) counsel had provided ineffective assistance by failing to request a preliminary hearing; failing to demand a confirmatory drug test; failing to suggest that Meddaugh's conditional jail time was sufficient punishment for the rule violations; and failing to argue that the majority of the allegations were based on hearsay.¹

¶7 The trial court denied Meddaugh's habeas petition on the grounds that certiorari is the standard mechanism for reviewing probation revocation decisions, and the petition had not been filed within the 45-day time limit for seeking certiorari relief. Meddaugh now appeals, renewing his claims that the

¹ Meddaugh appears to raise some additional claims of ineffective assistance in his appellate brief, but our review is limited to considering whether the circuit court acted properly based on the materials before it.

Department violated his due process rights and counsel provided ineffective assistance.

STANDARD OF REVIEW

¶8 An order denying a petition for writ of habeas corpus generally presents a mixed question of fact and law. *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12. We will uphold any factual determinations unless clearly erroneous, but will independently determine whether habeas relief is available under those facts. *Id.*

¶9 Here, because the circuit court denied Meddaugh's petition without a hearing, we will review *de novo* whether the allegations in the petition would be sufficient to warrant relief. *Cf. State v. Allen*, 2004 WI 106, ¶¶9, 27, and 36, 274 Wis. 2d 568, 682 N.W.2d 433 (applying *de novo* review to the sufficiency of allegations to warrant the relief sought in the context of a postconviction motion).

DISCUSSION

¶10 First, we agree with the circuit court that certiorari is the standard method for seeking review of probation revocation decisions, and that Meddaugh's petition was untimely with respect to all matters that could have been raised by certiorari. *See State ex rel. Cramer v. Schwarz*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591. Therefore, the trial court properly dismissed Meddaugh's first five claims alleging that the Department violated his due process rights in various respects.

¶11 However, because a claim of ineffective assistance of counsel lies outside the scope of certiorari review, a writ of habeas corpus is available to review counsel's performance during a probation revocation proceeding. *State ex*

rel. Reddin v. Galster, 215 Wis. 2d 179, 186, 572 N.W.2d 505 (Ct. App. 1997). Therefore, the circuit court erred in dismissing Meddaugh's claim of ineffective assistance of counsel based upon failure to comply with the certiorari deadline.

¶12 Nonetheless, we are satisfied that the circuit court could properly have dismissed the habeas petition on other grounds. *See State v. Holt*, 128 Wis. 2d 110, 124, 382 N.W.2d 679 (Ct. App. 1985) (The principle of efficient judicial administration allows this court to affirm proper decisions by the trial court, even when they were reached for the wrong reasons.). Specifically, we conclude that Meddaugh's allegations, in conjunction with the materials attached to his petition, are insufficient to establish a claim of ineffective assistance of counsel.

The test for ineffective assistance of counsel has two prongs: (1) a demonstration that counsel's performance was deficient, and (2) a demonstration that the deficient performance prejudiced the defendant. To prove deficient performance, a defendant must establish that his or her counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." The defendant must overcome a strong presumption that his or her counsel acted reasonably within professional norms. To satisfy the prejudice prong, the defendant must show that counsel's errors were serious enough to render the resulting conviction unreliable. We need not address both components of the test if the defendant fails to make a sufficient showing on one of them.

State v. Swinson, 2003 WI App 45, ¶58, 261 Wis. 2d 633, 660 N.W.2d 12 (citations omitted).

¶13 Here, Meddaugh cannot satisfy the prejudice prong because none of the actions he alleges counsel should have taken would have altered the result of the revocation proceeding. A request for a preliminary hearing would have failed

because no such hearing is required when the probationer has already provided a statement admitting the violation. WIS. ADMIN. CODE § DOC 331.04(2)(b). A demand for a confirmatory drug test would merely have reproduced the positive results of the confirmatory test which the urinalysis report shows was performed. An argument that Meddaugh had already been punished for the rule violations by the amendment of the judgment to include conditional jail time would have ignored the fact that the drug violation was discovered after the ATR and was not included in that agreement, and also would have been misplaced to the extent that it would be the trial court that determined what if any additional punishment was appropriate. And finally, Meddaugh's own statements would have been admissible as an admission to hearsay, and were themselves a sufficient basis for revocation, even if the admission of other statements or evidence might have been successfully challenged.

¶14 Because none of Meddaugh's allegations of ineffective assistance of counsel provided a basis upon which relief could have been granted, the trial court properly dismissed the habeas corpus petition.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

