

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2015

Diane M. Fremgen
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. 2013AP2868

Cir. Ct. No. 2013CV401

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN EX REL. JAMES J. KAUFMAN,

PETITIONER-APPELLANT,

V.

KELLIE BLECHINGER AND CHRISTINE SEIDL,

RESPONDENTS-RESPONDENTS.

APPEAL from orders of the circuit court for Eau Claire County:
JON M. THEISEN, Judge. *Affirmed.*

Before Hoover, P.J, Hruz and Higginbotham, JJ.

¶1 PER CURIAM. James Kaufman, pro se, appeals an order denying his petition for a writ of habeas corpus, and an order denying a motion for reconsideration. Kaufman challenges the authority of the Wisconsin Department

of Corrections to require him to be subject to global positioning system (GPS) monitoring. We affirm.

¶2 Kaufman’s convictions arose from masturbating an eleven-year-old boy, performing oral sex on a seventeen-year-old boy while videotaping the act, and possessing a CD-ROM of nude teenage boys. Kaufman was sentenced to seven years in prison for the oral sex count, two years in prison, consecutive, for the child pornography, and a withheld sentence with twenty years’ consecutive probation for the masturbation count. Kaufman served the nine-year prison sentence and was released to the community in June 2007. In December 2008, Kaufman’s probation was revoked and he was sentenced to eight years in prison. He was released to the community on May 7, 2013.¹ Upon his release, the DOC placed Kaufman on lifetime GPS monitoring.

¶3 On July 16, 2013, Kaufman filed a petition for a writ of habeas corpus challenging the GPS monitoring, to be issued to two DOC agents as respondents. Among other things, Kaufman alleged in the habeas petition, “On May 7, 2013, I was released to the community on parole. Upon my release, the Respondent(s) placed me on lifetime GPS monitoring, pursuant to Wis. Stats. § 301.48(2)(a)(7).” The circuit court denied the petition and Kaufman sought reconsideration. The court denied reconsideration and Kaufman now appeals.

¶4 Kaufman challenges the constitutionality of the statute authorizing the imposition of GPS monitoring, WIS. STAT. § 301.48.² Kaufman’s primary

¹ Kaufman admits he will remain on parole supervision at least until January 2016, absent a revocation of his supervision.

² All references to the Wisconsin Statutes are to the 2013-14 version.

argument is that the application of GPS monitoring violates the Ex Post Facto Clause, because he committed his crimes in 1997 and 1998, prior to the effective date of the statute on January 1, 2008. Kaufman also claims that lifetime imposition of GPS monitoring violates the Fourth Amendment and the Commerce Clause and imposes unreasonable financial penalties.

¶5 Habeas corpus provides extraordinary relief and lies only when the person claiming to be improperly restrained has no other remedy available at law. *See State ex rel. Fuentes v. Wisconsin Court of Appeals*, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999). The lack of adequate remedy requirement means that relief by habeas corpus will not be granted when relief could have been procured by resort to another general remedy. *See State ex rel. Doxtater v. Murphy*, 248 Wis. 593, 602, 22 N.W.2d 685 (1946), *modified on other grounds, Van Voorhis v. State*, 26 Wis. 2d 217, 221 n.2, 131 N.W.2d 833 (1965).

¶6 The appropriate forum for challenging rules of supervision imposed by the DOC is through a petition for writ of certiorari. *See State ex rel. Macemon v. McReynolds*, 208 Wis. 2d 594, 596 n.1, 561 N.W.2d 779 (Ct. App. 1997). Here, Kaufman's habeas petition alleges that at the time he was put on GPS monitoring by DOC agents, he was on supervision. His briefs to this court also conceded that he would remain on supervision until at least 2016. It is therefore reasonable to infer that Kaufman's GPS monitoring was a DOC-imposed rule of supervision, and to that extent Kaufman had an adequate remedy available by certiorari. In any event, a declaratory judgment action under WIS. STAT. § 806.04(2) provides an adequate remedy for challenging the constitutionality of WIS. STAT. § 301.48.

¶7 Accordingly, Kaufman had adequate remedies in law other than a petition for a writ of habeas corpus. Because Kaufman had other remedies in law available to him, he is procedurally barred from bringing a petition for habeas relief in this matter.

¶8 Kaufman insists that “while the pleadings were labeled as a habeas corpus petition, the content of the pleadings clearly assert a challenge to the constitutionality of WIS. STAT. § 301.48.” Kaufman argues we should ignore the label on his habeas petition and instead construe the pleadings as a declaratory judgment action.

¶9 Even if we construed Kaufman’s action as one for declaratory judgment as he requests, he has failed to show the attorney general was served with a copy of the proceedings. *See* WIS. STAT. § 806.04(11). Failure to serve the attorney general deprives the court of jurisdiction over the matter. *See Bollhoffer v. Wolke*, 66 Wis. 2d 141, 144, 223 N.W.2d 902 (1974).

¶10 Because we conclude the matter is procedurally barred, we need not address the merits of Kaufman’s remaining issues. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

By the Court.—Orders affirmed.

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

