

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 14, 2016**

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 Nos. 2015AP740-CR  
2015AP741-CR**

**Cir. Ct. Nos. 2004CF89  
2008CF165**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DANIEL LAWRENCE HANSON,**

**DEFENDANT-APPELLANT.**

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APPEALS from orders of the circuit court for Marinette County:  
JAY N. CONLEY and DAVID G. MIRON, Judges. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Daniel Hanson, pro se, appeals orders in these cases denying his petitions for positive adjustment time (PAT) pursuant to WIS.

STAT. § 973.198 (2011-12).<sup>1</sup> In Marinette County case No. 2004CF89, the Department of Corrections (DOC) sent the circuit court a letter stating it did not provide a time verification form because, although Hanson did serve prison time from October 1, 2009 through August 3, 2011, he had completed serving the sentence for that crime. The circuit court<sup>2</sup> denied the petition. In Marinette County case No. 2008CF165, the circuit court<sup>3</sup> denied the petition because Hanson failed to provide a verification form. Hanson argues: (1) because the sentences in case Nos. 2004CF89 and 2008CF165 run consecutively, he is entitled to PAT sentence reduction for both sentences if any part of the combined sentences was served during the applicable time periods set forth in § 973.198, from October 1, 2009 through August 3, 2011; (2) repeal of that statute in 2011 constitutes an ex post facto law; and (3) the DOC should be faulted for its failure to provide the time verification form in case No. 2008CF165. We affirm the orders.

¶2 In case No. 2004CF89, Hanson was convicted of fifth-offense drunk driving. The circuit court sentenced him to two years' initial confinement and two years' extended supervision. After Hanson completed serving the initial confinement portion of the sentence, his extended supervision was revoked and, on February 4, 2009, the court ordered Hanson reconfined for two years and four days. In case No. 2008CF165, Hanson was convicted of seventh-offense drunk driving, battery to an emergency rescue worker, and disorderly conduct. On June 29, 2009, the court imposed consecutive and concurrent terms totaling eight

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>2</sup> Judge Jay N. Conley presiding.

<sup>3</sup> Judge David G. Miron presiding.

years' initial confinement and eight years' extended supervision, consecutive to any other sentence Hanson was then serving.

¶3 These appeals concern Hanson's March 16, 2015 petitions for PAT. We affirm the circuit courts' denials of PAT sentence reduction for several reasons. First, Hanson was not eligible to earn PAT because he was convicted of a violent offense as defined in WIS. STAT. § 301.048(2)(bm). See WIS. STAT. § 302.113(2)(b). Because the battery sentence was imposed consecutive to all other sentences, Hanson's ineligibility for PAT extends to all of the sentences. See *State v. Harris*, 2011 WI App 130, ¶¶8-9, 337 Wis. 2d 222, 805 N.W.2d 386.

¶4 Second, Hanson's argument that the 2011 repeal of WIS. STAT. § 973.198 constitutes an ex post facto law is not properly preserved for appeal. The issue was not raised in the circuit court. An issue cannot be raised for the first time on appeal. *State v. Dowdy*, 2012 WI 12, ¶5, 338 Wis. 2d 565, 808 N.W.2d 691. Furthermore, Hanson's offenses and his sentences predate the effective date of the statute, October 1, 2009. See *State ex rel. Singh v. Kemper*, 2014 WI App 43, ¶3, 353 Wis. 2d 520, 846 N.W.2d 820, review granted, 2016 WI 2, 365 Wis. 2d 741, 872 N.W.2d 668 (Nov. 4, 2015). Therefore, there is no ex post facto violation. *Id.*, ¶¶20-25.

¶5 Finally, Hanson contends the DOC erred by failing to provide the circuit court with the time verification form in case No. 2008CF165. He includes in the appendix to his brief an inmate complaint form concluding the verification form was not sent due to human error. However, the complaint form was not a part of the record and was not presented to the circuit court before entry of the order from which this appeal is taken. In fact, the form did not exist at the time the circuit court reached its decision. Therefore, it was not properly included in

the appellant's appendix and is not properly before this court. *See State v. Aderhold*, 91 Wis. 2d 306, 314, 284 N.W.2d 108 (Ct. App. 1979). While Hanson describes the DOC's error, he does not identify any error of the circuit court for rejecting his petition and, in light of his ineligibility for PAT, he has established no prejudice from the DOC's error.

*By the Court.*—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

