

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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MARQUIS JOHNSON,  
*Petitioner/Appellant,*

*v.*

THE STATE OF ARIZONA,  
*Respondent/Appellee.*

No. 2 CA-HC 2014-0001  
Filed November 18, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

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Appeal from the Superior Court in Pima County

No. H20000008

The Honorable Paul E. Tang, Judge

**AFFIRMED**

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COUNSEL

Marquis Johnson, Tucson  
*Petitioner/Appellant*

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Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent/Appellee*

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**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

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ECKERSTROM, Chief Judge:

¶1 Marquis Johnson appeals from the trial court’s denial of his January 2014 petition for writ of habeas corpus. This court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(11)(a). For the following reasons, we affirm the court’s ruling.

**Background**

¶2 Johnson is currently imprisoned in the Arizona Department of Corrections (ADOC). In August 2000, he was extradited, over his objection, to Wisconsin to be tried on a felony warrant and complaint alleging first-degree murder.<sup>1</sup> See Interstate Agreement on Detainers (IAD), A.R.S. § 31-481. Following his conviction and sentencing in Wisconsin, he was returned to ADOC’s custody to serve the remainder of his sentences. He is subject to a detainer based on his Wisconsin conviction and sentence, which he is to serve when his Arizona sentences are completed.

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<sup>1</sup>In its motion seeking temporary transfer of custody, the state identified Johnson as “Marquis Johnson aka Rafael Newson,” the name under which he had been sought by Wisconsin authorities. Johnson was represented by appointed counsel at a hearing on the motion, held on July 17, 2000. The trial court granted the motion after considering documentary evidence from the state of Wisconsin and testimony from an Arizona Department of Public Safety Identification Technician.

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¶3 Several days after entry of the extradition order, Johnson's counsel filed a notice of appeal and a motion to suspend enforcement of the order pending appeal. The trial court denied Johnson's motion, and he was extradited to Wisconsin on August 18, 2000. The following month, this court granted Johnson's motion to dismiss his appeal on the ground it had been rendered moot by his extradition.

¶4 In the fall of 2010, Johnson filed motions for reconsideration of the trial court's 2000 extradition order, arguing that the documents submitted had been insufficient to support it and that his trial in Wisconsin had not commenced within 120 days of his arrival there, as required by Article IV of the IAD. He maintained his Wisconsin trial was therefore "invalid" and "should be dismissed with prejudice . . . and the lodged detainer lifted."

¶5 In June 2011, the trial court denied Johnson's motions to reconsider, concluding (1) any challenges to its extradition order could have been raised on appeal and (2) any issues regarding the validity of the current Wisconsin detainer "are a matter for a Wisconsin court to determine." In January 2014, Johnson filed a petition for writ of habeas corpus raising substantially the same issues and asking the court to issue a writ directing the ADOC to show cause "why [Wisconsin]'s unlawful detainer should not be dropped/dissmissed with prejudice."

¶6 The trial court denied the petition for the same reasons it denied Johnson's 2010 motions for reconsideration of the original extradition order. In addition, the court observed that the cause of Johnson's present detention is not the Wisconsin detainer, but sentences imposed in Maricopa County. Relying on *Atkins v. State ex rel. Eyman*, 15 Ariz. App. 364, 365, 488 P.2d 1001, 1002 (1971), the court concluded "the detainer is not and cannot 'be the object of an attack by habeas corpus.'" This appeal followed.

### Discussion

¶7 On appeal, Johnson maintains his petition should be granted and the Wisconsin detainer quashed based on his

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allegations that (1) the trial court erred in July 2000 when it ordered his extradition to Wisconsin, (2) his counsel rendered ineffective assistance by moving to dismiss an appeal of that extradition order, (3) his Wisconsin murder trial was held beyond the deadline imposed by the IAD, and (4) the signature on the order denying his habeas petition is illegible and “illegal.”<sup>2</sup>

¶8 We review the denial of a writ of habeas corpus for an abuse of discretion, *see State v. Cowles*, 207 Ariz. 8, ¶ 3, 82 P.3d 369, 370 (App. 2004), and review the trial court’s application of the IAD de novo, *State v. Almly*, 216 Ariz. 41, ¶ 23, 162 P.3d 680, 683 (App. 2007). Because Johnson’s claim of ineffective assistance of counsel was not raised in his petition below, we will not consider it on review.<sup>3</sup> And, as the trial court correctly determined, habeas relief is unavailable because Wisconsin’s detainer is not the cause of Johnson’s current confinement, *see Atkins*, 15 Ariz. App. at 365, 488 P.2d at 1002, we need not consider other issues he has raised on appeal. *See Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9, 130 P.3d 538, 540 (App. 2006) (appellate court may affirm trial court’s ruling if correct for any reason apparent in record).

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<sup>2</sup>Johnson also states that, in March 2014, he “put in” a motion for delayed appeal of the July 2000 extradition order with this court, but that the motion has gone “unanswered.” But the exhibit he provides establishes that his motion was not filed in this court, but only stamped “received.” Rule 9, Ariz. R. Civ. App. P., does not permit such a motion, and the limited motions available to extend the time for appeal in a civil proceeding must be filed with the trial court. *See id.*

<sup>3</sup>Johnson first raised this claim in his reply to the state’s response to his petition. On the same day he filed his notice of appeal from the denial of his petition, he asked the trial court to construe his reply as a motion for reconsideration. Thus, his appeal does not encompass the court’s ruling on that request. *See Lindsey v. Dempsey*, 153 Ariz. 230, 235, 735 P.2d 840, 845 (App. 1987) (appellate court lacks jurisdiction to consider ruling made after notice of appeal filed).

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¶9 With respect to the trial court’s determination of this issue, Johnson argues the court erroneously relied on *Atkins*, a case that is “outdated” and was “overruled” by *State v. Jacobson*, 22 Ariz. App. 260, 526 P.2d 784 (1974) (per curiam). We disagree.

¶10 In *Atkins*, we held that a prisoner who, like Johnson, was still serving an Arizona sentence, could not seek habeas relief from a detainer lodged to effect his transfer to another state. 15 Ariz. App. at 365, 488 P.2d at 1002. Similarly, in *Brown v. State*, our supreme court explained a prisoner “is not entitled to habeas corpus relief [when] he does not allege any facts which show that he is entitled to immediate release from custody.” 117 Ariz. 476, 477, 573 P.2d 876, 877 (1978); see also *Fields v. Suthers*, 984 P.2d 1167, 1170 n.8 (Colo. 1999) (recognizing construction of state habeas proceedings as matter of state law).

¶11 This court’s decision in *Jacobson* did not affect the force of these authorities. In *Jacobson*, we vacated a trial court’s decision authorizing the pre-transfer release of a person arrested and detained on a fugitive warrant under the Uniform Criminal Extradition Act (UCEA), now codified at A.R.S. §§ 13-3841 through 13-3870.02. 22 Ariz. App. at 261, 264-65, 526 P.2d at 785, 788-89. Noting that the UCEA included no provisions for pre-transfer release after Arizona’s governor had issued a fugitive warrant, we stated that a petition for a writ of habeas corpus was “[t]he only remedy available” to challenge the legality of detention pursuant to a governor’s warrant under the UCEA. *Jacobson*, 22 Ariz. App. at 264-65, 526 P.2d at 788-89.

¶12 Unlike Johnson, however, who is currently serving prison sentences imposed for Arizona convictions, Jacobson had been arrested and detained solely on the basis of a fugitive warrant. See *id.* at 261, 526 P.2d at 785; see also *Cuyler v. Adams*, 449 U.S. 433, 435 n.1 (1981) (explaining “the [UCEA], like the [IAD], establishes procedures for the interstate transfer of persons against whom criminal charges are outstanding,” but “[u]nlike the [IAD], the [UCEA] applies to persons at liberty as well as to persons in prison”). Our statement in *Jacobson* does not suggest that habeas corpus relief is available to a prisoner like Johnson, who is

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imprisoned for Arizona sentences and also subject to a detainer lodged by another state.

**Disposition**

¶13 The trial court correctly concluded Johnson's habeas claim is foreclosed under Arizona law. *See Brown*, 117 Ariz. at 477, 573 P.2d at 877; *Atkins*, 15 Ariz. App. at 365, 488 P.2d at 1002. Accordingly, we affirm the court's order denying Johnson's petition.