COURT OF APPEALS
DECISION
DATED AND FILED

October 20, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1717-AC **Cir. Ct. No. 1996CF34**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES E. BULCKAEN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County: THOMAS R. WOLFGRAM, Judge. *Affirmed*.

Before Snyder, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. James E. Bulckaen has appealed from an order denying his motion to vacate two judgments of conviction entered on January 6, 1997. Bulckaen moved to vacate the convictions and withdraw his underlying no

contest pleas pursuant to a petition for a writ of error *coram nobis*. We affirm the trial court's order denying relief.

¶2 The January 6, 1997 judgments convicted Bulckaen of two drug offenses. Bulckaen has completed both sentences. However, in early 2005, the United States Customs and Border Patrol initiated a deportation investigation based on his prior criminal convictions. Subsequently, an immigration judge ordered his deportation. This court has recently been informed by appellate counsel that the Board of Immigration Appeals has affirmed that decision, and that Bulckaen's deportation is imminent.

¶3 The material underlying facts are undisputed. On October 8, 1996, Bulckaen entered no contest pleas to two counts of delivery of marijuana. Pursuant to WIS. STAT. § 971.08(1)(c) (2003-04),[1] the trial court advised Bulckaen during the plea colloquy that "[i]f you are not a citizen of the United States of America, upon conviction you would be subject to deportation, exclusion from admission to this country, or denial of naturalization under federal law." Bulckaen replied that he understood.

¶4 Trial counsel then inquired of Bulckaen whether he was a United States citizen, and Bulckaen replied that he was a registered alien, not a citizen. Trial counsel then advised the trial court that a provision in the federal code permitted the trial court to enter a statement that the United States Attorney General not consider this charge for deportation. Counsel was referring to a Judicial Recommendation Against Deportation (JRAD). The trial court

[1] All references to the Wisconsin Statutes are to the 2003-04 version.

responded: "We will take that up at the time of sentencing." Trial counsel replied that he would bring in the federal code at that time. However, neither deportation nor the JRAD was mentioned by the parties or trial court at sentencing.

¶5 It is undisputed that the JRAD provisions referred to by trial counsel had been repealed six years before Bulckaen entered his pleas. In April 2005, Bulckaen moved to vacate the judgments of conviction pursuant to a petition for a writ of error *coram nobis*, alleging that trial counsel made a factual error when he misstated that the JRAD provided for relief from deportation.[2] Bulckaen contends that this error constituted ineffective assistance of counsel, and that if he had known that the JRAD was no longer available and that deportation would result from the convictions, he would not have entered the no contest pleas.

¶6 The writ of error *coram nobis* has a very limited scope. ***Jessen v. State***, 95 Wis. 2d 207, 213, 290 N.W.2d 685 (1980). It is a discretionary writ addressed to the trial court. ***Id.*** Its purpose is to give the trial court an opportunity to correct its own record of an error of fact not appearing on the record and which error would not have been committed by the court if the matter had been brought to the attention of the trial court. ***Id.*** at 213-14. "In order to constitute grounds for the issuance of a writ of error *coram nobis* there must be shown the existence of an error of fact which was unknown at the time of trial and which is of such a nature that knowledge of its existence at the time of trial would have prevented the entry of judgment." ***Id.*** at 214.

[2] Bulckaen never commenced a direct appeal from his judgments of conviction, nor did he file a postconviction motion under WIS. STAT. § 974.06. Because he is no longer in custody as a result of these judgments, he cannot seek relief from the judgments of conviction under § 974.06. *See* ***Jessen v. State***, 95 Wis. 2d 207, 211, 290 N.W.2d 685 (1980).

¶7 For purposes of this decision, this court will assume arguendo that trial counsel's misstatement about the availability of the JRAD constitutes an error of fact not appearing on the record which was unknown at the time Bulckaen entered his pleas. However, Wisconsin law also requires that the error be of such a nature that knowledge of its existence at the time of the pleas would have prevented the entry of judgment. This portion of the test for issuing a writ of error *coram nobis* is unsatisfied.

¶8 Nothing in the record supports a determination that Bulckaen would not have entered the no contest pleas if, at the time he entered them, he had known that the JRAD was unavailable. In exchange for Bulckaen's no contest pleas, other charges were dismissed and his prison exposure was substantially reduced. In addition, the State agreed to recommend probation on one charge, and to argue for less than the maximum sentence on the other. Bulckaen never raised the JRAD issue at sentencing, even though he was invited to do so by the trial court at the plea hearing. He also failed to pursue it in any manner after sentencing.

¶9 Because Bulckaen failed to pursue this issue after it was raised by counsel and after the trial court gave him an opportunity to pursue it at sentencing, no basis exists to conclude that he would not have entered the pleas if he had known the JRAD was unavailable. Nothing in the record provides a basis to conclude that Bulckaen was concerned about deportation until the federal government investigated him in 2005, apparently as a result of changes in the federal government's deportation policies after September 11, 2001. However, because the JRAD issue and concern about deportation were not deemed important enough to pursue at the time he entered his pleas, no basis exists to conclude that Bulckaen would not have entered his no contest pleas on October 8,

1996, if he had known the JRAD was unavailable. The trial court therefore properly denied Bulckaen's petition for a writ of error *coram nobis*.

¶10 In the conclusion of his brief, Bulckaen alternatively requests relief under WIS. STAT. § 806.07(1)(h) or article I, section 9 of the Wisconsin Constitution. However, these arguments are not adequately briefed or developed, and we will address them no further. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 369, 560 N.W.2d 315 (Ct. App. 1997).

By the Court.—Order affirmed.

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