

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2007

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 Nos. 2005AP1203
2005AP1544**

**Cir. Ct. Nos. 1990CF903606
1989CF893538**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CHARLES BALDWIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Charles Baldwin appeals from a consolidated order denying his petition for a writ of *coram nobis*.¹ The issue is whether

¹ There was one consolidated order disposing of both circuit court cases.

Baldwin was entitled to *coram nobis* relief for the circuit court's alleged failure to advise him of his right to a direct appeal in two Milwaukee County circuit court cases. We conclude that Baldwin's claims are not cognizable under *coram nobis*, and even if they were, his substantive claims are belied by the record in each case. Therefore, we affirm.

¶2 In 1990, Baldwin pled guilty to delivering cocaine. The circuit court imposed and stayed a three-year sentence, and placed Baldwin on a three-year term of probation. In 1991, Baldwin entered an *Alford* plea to attempting to deliver cocaine.² Incident to that offense, Baldwin's probation in the 1990 case was revoked, and he was sentenced in the new charge to eighteen months, to run concurrent to the previously imposed three-year sentence. Baldwin did not appeal from either judgment, contending that he was never advised of his right to do so, and now claims that those unappealed judgments were subsequently used to enhance a federal sentence imposed in 1993.

¶3 Baldwin filed a petition for a writ of *coram nobis*, claiming that he was deprived of his direct appeal rights, and that those convictions were then used to enhance his federal sentence. The circuit court denied the petition because Baldwin's claims were beyond the scope of *coram nobis*, and even if his claims were cognizable, they were belied by the circuit court records.

² An *Alford* plea waives a trial and constitutes consent to the imposition of sentence, despite the defendant's claim of innocence. See *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970); accord *State v. Garcia*, 192 Wis. 2d 845, 856, 532 N.W.2d 111 (1995) (acceptance of an *Alford* plea is discretionary in Wisconsin).

¶4 “The writ of *coram nobis* is a common-law remedy of very narrow scope.” *State v. Kanieski*, 30 Wis. 2d 573, 576, 141 N.W.2d 196 (1966).

An error to constitute a ground for the granting of the writ of *coram nobis* must not only be unknown to the court but would have prevented the judgment of the court.... Unless it clearly appears that an error of fact existed before judgment and but for such error the judgment would not have been entered, the writ of *coram nobis* should not be granted.

Id. (citations omitted). “[T]he writ does not lie to correct errors of law and of fact appearing on the record since such errors are traditionally corrected by appeals and writs of error.” *Id.*

¶5 The circuit court’s claimed failures to advise Baldwin of his rights to appeal from both judgments are not errors of fact that would have precluded the entry of those judgments. These are not the type of errors amenable to *coram nobis* relief. *See id.*

¶6 Assuming *arguendo* that Baldwin’s claims are cognizable under *coram nobis* (which they are not), they are belied by the record. In the 1990 case, the sentencing transcript indicates that after the trial court imposed sentence and entered judgment, it announced in Baldwin’s presence, “[h]e has 20 days time in which to appeal.” In the 1991 case, Baldwin’s signature and a mark (“X”) appear on the SM-33 form (Information on Postconviction Relief), noting that “[t]he defendant does not intend to seek postconviction relief.” Baldwin denies that he was advised of his appeal rights, and claims that he never signed “any forms indicating that he did not wish to pursue postconviction relief.” There is nothing, apart from his belated allegations, that supports his claims of not being advised of his appellate rights, and in fact, the circuit court records directly belie his claims.

By the Court.—Order affirmed.

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

