COURT OF APPEALS
DECISION
DATED AND FILED

March 28, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 01-1061
01-1062

Cir. Ct. Nos. 91-CM-864
91-CM-937

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TONI P. CAYTON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: GERALD C. NICHOL, Judge. *Affirmed.*

¶1 VERGERONT, P.J.[1] Toni Paul Cayton, an inmate at Supermax Correctional Institution, appeals the trial court's order denying his petition for writ

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

of error *coram nobis*. We conclude the court did not err in denying the petition and therefore affirm.

¶2 In the two cases involved in this appeal, Cayton was convicted in 1991, based on his no contest pleas, of misdemeanor battery, disorderly conduct, and two counts of bail jumping, all as a repeater. The court imposed a term of probation, which was revoked, and subsequently sentenced Cayton to a total of seven years in prison. It appears that while incarcerated, Cayton made threats against correctional and other officials, which formed the basis for a subsequent conviction and the sentence he is now serving.

¶3 In Cayton's petition for a writ of error *coram nobis*, he challenges the proceedings leading up to the 1991 convictions on a number of grounds, alleging that the sentence he is currently serving is a "direct collateral result" of the "unlawfully imposed" sentences for the 1991 convictions.

¶4 The writ of error *coram nobis* is available to a person who seeks relief from a conviction for which the sentence has already been served. *See* ***Jessen v. State***, 95 Wis. 2d 207, 212, 290 N.W.2d 685 (1980). A person seeking this writ must show "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. "[T]he factual error that the petitioner wishes to correct must be crucial to the ultimate judgment *and* the factual finding to which the alleged factual error is directed must not have been previously visited or 'passed on' by the trial court." ***State v. Heimermann***, 205 Wis. 2d 376, 384, 556 N.W.2d 756 (Ct. App. 1996). The writ is "of very limited scope," being aimed at the correction of "an error of fact not appearing on the record." ***Jessen***, 95 Wis. 2d at 213-14. *Coram nobis* is not

available "to correct errors of law and of fact appearing on the record," because those errors are reachable by way of "appeals and writs of error." ***Id.*** at 214.

¶5 Because the decision whether to issue a writ is within the discretion of the trial court, ***Heimermann***, 205 Wis. 2d at 386, we will affirm if the trial court applied the correct law to the relevant facts and reached a reasonable decision. ***State v. Robinson***, 146 Wis. 2d 315, 330, 431 N.W.2d 165 (1988).

¶6 The first error Cayton claims in his petition is that his appellate counsel was ineffective for filing a no merit ***Anders*** brief when a speedy trial violation would have been obvious. The trial court correctly decided that appellate counsel's conduct is not a fact in existence at the time of trial or judgment but, rather, something that did not exist until after judgment was entered.

¶7 The second claim of error is that Cayton's right to a speedy trial was violated and, since he entered his no contest pleas without knowing that he was waiving his right to a speedy trial, there was a violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. The trial court correctly decided that Cayton's argument of a speedy trial violation was not based on a factual error, but on a claim of legal error which is not within the scope of *coram nobis*. The court went on to carefully analyze the claim of a speedy trial violation, considering both the statute, WIS. STAT. § 971.10(4), and the constitutional protection of the right to a speedy trial, and correctly decided there was a violation under neither. It follows that Cayton's lack of knowledge that he was waiving this claim—a claim that has no merit—is not within the scope of *coram nobis*.

¶8 The third claim of error is that trial counsel was ineffective for not raising the speedy trial issue. Cayton does not identify any error of fact that was in existence at the time of trial but was unknown.

¶9 The fourth claim of error is that the issues Cayton raises are not precluded by procedural default or otherwise. As the trial court correctly noted, this is not a claim of error in the proceedings leading to the 1991 convictions, and it does not identify any fact coming with the scope of *coram nobis*; rather, it is an argument that the court should consider Cayton's other claims of error.

¶10 The fifth and last claim of error is that prison officials erroneously calculated Cayton's date of release from prison for the sentence imposed for the 1991 convictions, thereby lawfully extending it, and that the court erroneously exercised its sentencing discretion in imposing that sentence. As to the first portion of this claim, the trial court correctly recognized that, even if the prison officials miscalculated Cayton's release date, that is not a fact in existence before judgment was entered. As to the second portion, assuming *coram nobis* reaches the sentencing proceeding, which occurs after a judgment of conviction is entered, Cayton has not identified a fact that was in existence at the time of sentencing but was then unknown.

¶11 We conclude the trial court applied the correct law to the facts of record and reached a reasonable decision in denying Cayton's petition. We therefore affirm.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.