COURT OF APPEALS
DECISION
DATED AND FILED

March 29, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1559 **Cir. Ct. No. 1975CF5829**

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

STATE OF WISCONSIN EX REL. LEONARD COLLINS, SR.,

PETITIONER-APPELLANT,

V.

STATE OF WISCONSIN,

RESPONDENT-RESPONDENT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Leonard Collins, Sr., appeals an order of the circuit court, which denied a motion Collins called a petition for a writ of *coram nobis*. We affirm.

¶2 In 1976, Collins was convicted of first-degree murder after defense counsel determined that an insanity plea could not be supported. Believing his mother-in-law, Ada Shellaugh, was meddling in his marriage, Collins armed himself with a bayonet blade, went to Shellaugh's home, broke in after she refused him entry, and stabbed her multiple times. Although Shellaugh was able to go for help, medical intervention could not save her. Collins has pursued multiple postconviction motions and appeals in the last thirty-five years to try to overturn this conviction; none have been successful.

¶3 Most recently, Collins petitioned the circuit court for, according to his caption, a writ of *coram nobis*, alleging that (1) his trial attorneys failed to discover that he suffers from "psychomotor epilepsy," a seizure disorder, and (2) the trial court never had evidence before it that Shellaugh had died from heart failure, a side effect of anesthesia. Collins contends that these "factual errors" should have prevented entry of the judgment of conviction. The circuit court rejected the petition, noting that Collins was simply revisiting claims he had made before, and that in any event, *coram nobis* was not applicable here. Collins appeals.

¶4 The writ of *coram nobis* is a discretionary writ addressed to the circuit court. ***Jessen v. State***, 95 Wis. 2d 207, 213, 290 N.W.2d 685, 688 (1980). 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 [its] attention[.]" ***Id.*** at 213–214, 290 N.W.2d at 688. More succinctly, it is a "writ of error directed to a court for review of its own judgment predicated on alleged errors of fact." BLACK'S LAW DICTIONARY 388 (9th ed. 2009).

¶5 "A person seeking a writ of *coram nobis* must pass over two hurdles." ***State v. Heimermann***, 205 Wis. 2d 376, 384, 556 N.W.2d 756, 759 (Ct. App. 1996). First, he or she must establish that there is no other remedy available. ***Ibid***. Second, the factual error sought to be corrected "must be crucial to the ultimate judgment *and* the factual finding to which the alleged error is directed must not have been previously visited or 'passed on' by the trial court." ***Id.***, 205 Wis. 2d at 384, 556 N.W.2d at 760 (emphasis in original). The writ is not available to Collins because he cannot fulfill either prerequisite.

¶6 ***Heimermann*** explains that criminal defendants seeking a writ of *coram nobis* "must not be in custody because if they are, [WIS. STAT. §]974.06, … as an example, provides them a remedy." ***Heimermann***, 205 Wis. 2d at 384, 556 N.W.2d at 759–760. Collins complains that § 974.06 remedies are not actually available to him, evidenced by repeated invocation of procedural bars against him to deny his petitions.[1] However, the fact that Collins has thus far been unsuccessful in obtaining relief does not necessarily mean the remedies are unavailable.[2] More significantly, though, Collins also fails to show that the judgment of conviction is predicated on either alleged factual error.

¶7 First, Collins complains his trial attorneys failed to have him diagnosed with epilepsy. It appears that he believes that had he obtained a diagnosis before trial, he would have been able to support a not-guilty-by-reason-

[1] *See, e.g.*, ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157, 163–164 (1994).

[2] The procedural bar of ***Escalona-Naranjo***, for instance, does not apply if a defendant is able to present a sufficient reason for his or her failure to raise issues previously. ***Id.*** at 185, 517 N.W.2d at 164; *see also* WIS. STAT. § 974.06(4).

of-mental-disease-or-defect plea, so the failure to discover the "fact" of his disorder invalidates the judgment.

¶8 Collins's seizure disorder was first diagnosed in 1979. He makes no showing that he suffered the disorder at the time of his crime in 1975, or at the time of his trial in 1976. In fact, prior to trial, the trial court committed Collins for sixty days and ordered him to undergo a "complete mental, social, psychiatric, psychological and neurological examination" to verify his competency to stand trial. The resulting report found no impediment to Collins's competency. Later, counsel asked to enter a not-guilty-by-reason-of-mental-disease-or-defect plea, and the trial court appointed a psychiatrist. On the return date, the trial court summarized the doctor's report as "negative for mental disease" at the time of the offense.

¶9 Collins also does not show that if he was suffering the disorder at the time he stabbed Shellaugh, that he was in the middle of a seizure when committing the act; or that if he was suffering from the disorder and having a seizure at the time he killed Shellaugh, that this episode would rise to the level of a mental disease or defect sufficient to negate his criminal culpability. Accordingly, Collins has not shown that his 1979 epilepsy diagnosis was "crucial to" or otherwise should have prevented entry of the 1976 judgment of conviction.

¶10 Second, Collins complains that the trial court only considered a medical report listing exsanguination from the stab wounds as Shellaugh's cause of death when, in fact, she suffered heart failure on the operating table.[3] Collins

[3] We note that Collins was actually tried and convicted by a jury, not the trial court, but that fact does not change the analysis.

contends that medical malpractice in the administration of anesthesia caused Shellaugh's death, and had that "fact" been before the trial court, he would not have been convicted. Collins does not adequately demonstrate how Shellaugh's heart failure is crucial to the judgment and, moreover, this argument has been previously addressed and rejected by the circuit court.

¶11 In 1997, Collins raised the issue of Shellaugh's cause of death for what appears to be the third time. The circuit court then explained that:

> Collins contends that Shellaugh died from the side effects of medication, and therefore, he was illegally convicted.
>
> Defendant stabbed his mother-in-law, the victim, repeatedly with a bayonet around 5 p.m. on November 17, 1975. At 10:30 p.m., after a series of medical procedures, she was pronounced dead as the result of multiple stab wounds. The fact that a medical procedure was not effective does not exonerate the defendant. Defendant's argument is frivolous and wholly without merit.

¶12 This is consistent with ***State v. Block***, 170 Wis. 2d 676, 683, 489 N.W.2d 715, 718 (1992), which states that "any medical negligence in connection with procedures undertaken in response to a life-threatening situation created by the defendant does 'not break the chain of causation' even though that negligence may have 'contributed' to the victim's death." (Citation omitted.) In other words, ***Block*** illustrates why the role, if any, of anesthesia in Shellaugh's death is not crucial to the judgment.

¶13 A petition for a writ of *coram nobis* is properly denied if the proffered "correct" facts will not produce a different result. *See* 39 AM. JUR. 2D *Habeas Corpus* § 214 (2010). As we have seen, neither of Collins's factual points would yield a different result: the circuit court properly denied the writ.

¶14 To the extent that Collins's motion is not actually a petition for a writ of *coram nobis* but is, instead, a WIS. STAT. § 974.06 motion, it is procedurally barred. The issue of his seizure disorder was raised at least four times previously, and the issue regarding Shellaugh's cause of death has been raised at least six times previously. Collins cannot repeatedly re-raise issues already addressed.

By the Court.—Order affirmed.

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