

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 27, 2011

A. John Voelker
Acting 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 No. 2010AP1677

Cir. Ct. No. 1994CF943162

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AGUSTIN JUNIOR VELEZ,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Agustin Junior Velez, *pro se*, appeals the order denying his postconviction motion to amend his judgment of conviction to include what he describes as “his common law Spiritual Name of ‘Abdul Malik Shafiq.’” We affirm.

BACKGROUND

¶2 In 1995, Velez was convicted of first-degree intentional homicide as a party to the crime and was sentenced to life in prison, with parole eligibility in 2060. The judgment of conviction reflects the name “Augustin Velez.” Velez did not object to this designation.

¶3 In 1996, Velez filed a motion for postconviction relief pursuant to WIS. STAT. § 809.30 and a direct appeal arguing that he was entitled to a new trial. He did not object to the use of his given name in the judgment. The circuit court denied Velez’s motion and this court affirmed. *See State v. Velez*, No. 1996AP2430-CR, unpublished slip op. (Wis. Ct. App. Oct. 7, 1997). The Wisconsin Supreme Court granted review and affirmed. *See State v. Velez*, 224 Wis. 2d 1, 589 N.W.2d 9 (1999).

¶4 In 2008, Velez filed a collateral motion for postconviction relief. Again, he did not challenge the use of his given name in the judgment of conviction. The circuit court denied Velez’s motion and he voluntarily dismissed his appeal from that order.

¶5 In 2009, Velez filed a motion for postconviction discovery. The use of Velez’s given name in the judgment of conviction was not at issue. The circuit court denied the motion and Velez did not appeal.

¶6 In 2010, fifteen years after the judgment of conviction was entered, Velez filed the motion leading to the instant appeal. He sought to have the name Abdul Malik Shafiq added to the judgment of conviction so that both it and his given name would appear. The circuit court denied the motion without a hearing

after concluding that Velez failed to set forth sufficient facts to show that the alias should be included on the judgment.

DISCUSSION

¶7 The circuit court concluded that Velez’s case could be denied for the same reasons we relied on in *State v. Smith*, 2009 WI App 104, 320 Wis. 2d 563, 770 N.W.2d 779. We agree.

¶8 In *Smith*, we affirmed the circuit court’s denial of Smith’s motion to amend his judgment of conviction to reflect his spiritual name. *See id.*, 2009 WI App 104, ¶1, 320 Wis. 2d at 564, 770 N.W.2d at 780. We stated:

Smith is asserting that his name was legally changed prior to the time he committed the crime for which he is imprisoned.... Smith asserts that his name was changed not by virtue of a court order, but by application of common law. Smith is correct that Wisconsin law allows one to change one’s name via the common law. However, we conclude that Smith’s motion—which was based on his assertion that he changed his name via the common law—failed to provide any evidence that he changed his name through consistent and continuous use. Moreover, he failed to raise this issue during the pendency of his criminal case, even though he was supposedly already using the name Marcöľ Vön Capöeira during that time. For these reasons, the motion was properly denied.

Id., 2009 WI App 104, ¶11, 320 Wis. 2d at 568, 770 N.W.2d at 782 (citation omitted).

¶9 As in *Smith*, Velez has failed to provide sufficient evidence that he changed his name under the common law through consistent and continuous use. The circuit court pointed out that other than a few writings attached to his reply brief, Velez provided neither a sworn statement nor other documentation to support his claim of consistent and continuous use. In addition, like in *Smith*,

Velez “failed to raise this issue during the pendency of his criminal case, even though he was supposedly already using the name” for two years prior to his arrest in 1994.¹ *See ibid.* Consequently, we agree with the State that by waiting fifteen years before making his request, Velez forfeited any right to have the judgment amended in this regard. *See id.*, 2009 WI App 104, ¶12, 320 Wis. 2d at 569, 770 N.W.2d at 782 (“Smith’s failure to raise the issue of a different legal name, which he claims he was using before he even committed the crime, during his criminal case constitutes a forfeiture of any right to seek to amend the judgment to reflect that name.”).

¶10 While Velez claims that he cannot be held to have forfeited a right which he did not know he had, we remind him that ignorance is not a sufficient excuse for failing to make the court aware that he used a name other than his given name. *See generally Douglas County Child Support Enforcement Unit v. Fisher*, 185 Wis. 2d 662, 670, 517 N.W.2d 700, 704 (Ct. App. 1994) (The maxim that “‘ignorance of the law is no excuse’ ... exists as a legal presumption and is applicable where necessary to the due administration of justice.”) (citation omitted). Velez further asserts that he has a First Amendment right to include his alias on the judgment of conviction because it is somehow essential for the free exercise of his religion and that a waiver of a constitutional right must be knowing and voluntary. Velez, however, “has no positive right to a name change. The fact that others have changed their names, or that one of his stated reasons for seeking the name change is religious in nature, does not create an affirmative right to the

¹ In his postconviction motion and supporting affidavit, Velez submits conflicting dates as to when he began using the name Abdul Malik Shafiq. At one point in his motion, he asserts that he has used the name since 1992. In his supporting affidavit, however, he avers that he adopted the name in 2005.

name change.” See *Williams v. Racine County Circuit Court*, 197 Wis. 2d 841, 846, 541 N.W.2d 514, 516 (Ct. App. 1995).

By the Court.—Order affirmed.

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

