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You are hereby notified that the Court has entered the following **amended** opinion and order:

2015AP2146-CR	State of Wisconsin v. William N. Staples (L.C. # 1999CF5821)
2015AP2434-CR	State of Wisconsin v. William N. Staples (L.C. # 1975CF6035)

Before Brennan, P.J., Kessler and Brash, JJ.

William Norman Staples, *pro se*, appeals two orders, each of which denies him a writ of *coram nobis*.¹ Upon our review of the briefs and records, we conclude at conference that these

¹ Staples filed separate appeals in these cases and the parties separately briefed the issues. On our own motion, we now consolidate the cases for disposition. *See* WIS. STAT. RULE 809.10(3) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

matters are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In Milwaukee County case No. 1975CF6035, which underlies appeal No. 2015AP2434-CR, Staples, represented by retained counsel, pled guilty in June 1976 to attempted first-degree murder. He completed service of his fourteen-and-a-half year indeterminate sentence on June 1, 1994. In Milwaukee County case No. 1999CF5821, which underlies appeal No. 2015AP2146-CR, Staples, again represented by retained counsel, pled guilty in January 2000 to possessing not more than five grams of cocaine with intent to deliver cocaine. In April of 2000, he received a two-year indeterminate sentence and was remanded into custody at the conclusion of the sentencing hearing. Although the record does not expressly reflect that he completed serving the two-year sentence, the parties agree that he did so.

In 2015, Staples filed a petition for a writ of *coram nobis* in each of the two Milwaukee County cases described above. He asked each trial court to grant the writ and vacate the conviction. As grounds, he asserted that he received ineffective assistance of counsel because, he said, in each case his trial lawyer failed to pursue an appeal on his behalf. Both trial courts denied relief, and Staples appeals.

“The writ of *coram nobis* is a discretionary writ of ‘very limited scope’ that is ‘addressed to the trial court.’” *State ex rel. Patel v. State*, 2012 WI App 117, ¶12, 344 Wis. 2d 405, 824 N.W.2d 862 (citation omitted). The purpose of the writ is to allow the trial court to correct an error of fact that does not appear in the court’s own record and that “‘would not have been committed ... if the matter had been brought to the attention of the trial court.’” *See id.* (citations omitted). To obtain a writ of *coram nobis*, two necessary conditions must both be satisfied. *See*

id., ¶13. First, no other remedy must be available to the petitioner. *See id.*, ¶20. Second, the petitioner must establish “that there exists a factual error unknown at the time of the plea that is of such a nature that knowledge of its existence would have prevented the entry of judgment.”

Id.

The State concedes that Staples has no other remedy available. Assuming without deciding that the State’s concession is warranted, Staples nonetheless is not entitled to relief because he has not demonstrated the existence of a factual error. Rather, Staples alleges that his trial lawyers were ineffective. “[W]hether counsel’s assistance was ineffective is a question of law.” *State v. Shata*, 2015 WI 74, ¶31, 364 Wis. 2d 63, 868 N.W.2d 93 (citation omitted). Because Staples rests his petitions on alleged errors of law, he is not eligible for writs of *coram nobis*. *See Patel*, 344 Wis. 2d 405, ¶26 (writ of *coram nobis* does not apply where petitioner alleges only an error of law).

Staples suggests that the scope of a writ of *coram nobis* should be broadened and that we should apply the writ to address legal errors implicating constitutional claims.² We considered and rejected such an argument in *Patel*, concluding that broadening the well-settled scope of the writ would be incompatible with the error-correcting function of the court of appeals. *See id.*, ¶18. We will not consider the argument again here. *See Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (holding that the court of appeals may not overrule, modify, or withdraw language from prior published decisions of Wisconsin appellate courts).

² An allegation that a criminal defendant received ineffective assistance of counsel raises a constitutional claim. *See State v. Starks*, 2013 WI 69, ¶54, 349 Wis. 2d 274, 833 N.W.2d 146.

Staples suggests that the United States Supreme Court requires that he be allowed to pursue a collateral attack on his convictions because, he tells us, those convictions have been used to enhance the sentence he subsequently received in a federal case. In support, he cites *Custis v. United States*, 511 U.S. 485 (1994).³ *Custis* does not apply to the proceedings here. As construed by our supreme court, *Custis* provides that, under the narrow circumstance where an offender alleges that a violation of the constitutional right to a lawyer occurred in a prior criminal proceeding, the person may “use an enhanced sentence proceeding predicated on [the] prior conviction as the forum in which to challenge the prior conviction.” See *State v. Hahn*, 2000 WI 118, ¶29, 238 Wis. 2d 889, 618 N.W.2d 528. Staples filed his collateral attacks on his Wisconsin convictions outside the federal forum in which he evidently faced an enhanced sentence proceeding. Therefore, *Custis* does not aid him. See *id.*; see also *State v. Peters*, 2001 WI 74, ¶¶1, 4, 244 Wis. 2d 470, 628 N.W.2d 797 (explaining that under *Custis* and *Hahn* the defendant could collaterally attack a prior conviction in the forum where he was subsequently prosecuted for a later criminal charge if the prior conviction was used to enhance the sentence for the later crime and the prior conviction allegedly was obtained in violation of the defendant’s right to counsel).

To be sure, our supreme court recognized that an offender may challenge a prior conviction “in a forum other than the enhanced sentence proceeding by whatever means available under state law.” See *Hahn*, 238 Wis. 2d 889, ¶29. That conclusion is of no assistance to Staples. *Hahn* does not permit him to challenge his Wisconsin convictions in a forum other

³ Staples refers to “*Curtis v. United States*,” but the remainder of the citation clarifies the reference.

than the enhanced federal sentence proceeding unless he identifies a “means available,” *see id.*, that is, a legal mechanism that permits the challenge. He has not identified such a mechanism.

Last, we note Staples’s claim that he is entitled to orders vacating his convictions because he has fully served his Wisconsin sentences and, by statute, his civil rights have been restored. *See* WIS. STAT. § 304.078.⁴ In his view, the statutory restoration of his civil rights constitutes a pardon that should prevent the collateral use of his state convictions to enhance his federal sentence. Staples makes this claim for the first time on appeal, and we therefore reject his argument. *See State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997). Moreover, Staples’s argument appears aimed at the federal court where the enhanced sentencing proceeding took place rather than the state courts where his earlier convictions arose. For the sake of completeness, we add that, to the extent he asks this court to construe the statutory restoration of his civil rights as a “pardon,” we cannot do so. Only the governor can grant a pardon for a Wisconsin crime. *See* WIS. CONST. art. V, § 6; *see also* Donald Leo Bach, *To Forgive, Divine: The Governor’s Pardoning Power*, WIS. LAW., Feb. 2005, at 12, 14.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

⁴ Staples refers to restoration of his civil rights under WIS. STAT. § 57.078, but that statute was renumbered pursuant to 1989 Wis. Act 31, § 1706.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals