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DISTRICT I

February 14, 2019

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

2018AP680 State of Wisconsin v. Sean Fitzgerald Rowell
(L.C. # 1992CF923243)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Sean Fitzgerald Rowell, *pro se*, appeals from an order of the circuit court that denied his petition for a writ of *coram nobis*. Based upon our review of the briefs and record, we conclude

at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] The order is summarily affirmed.

In 1992, Rowell was charged with, and pled guilty to, one count of armed robbery as a party to a crime. The circuit court imposed a fifty-six-month sentence, which Rowell has completed. In March 2018, Rowell petitioned the circuit court in this matter for a writ of *coram nobis*, claiming that defects in the plea colloquy rendered his plea unknowing, unintelligent, and involuntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). The circuit court denied the petition, noting that Rowell's claims of error "do not fall within the scope of the writ of *coram nobis*." Rowell appeals.

The writ of *coram nobis* is a discretionary writ addressed to the circuit court. *See* ***Jessen v. State***, 95 Wis. 2d 207, 213, 290 N.W.2d 685 (1980). Its purpose is "to give the [circuit] 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 213-14. 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).

"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 (Ct. App. 1996). First, he or she must establish that there is no other remedy available. ***Id.*** For example, a criminal defendant must not be in custody because if they are, a remedy may be available under WIS. STAT. § 974.06. *See*

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Heimermann, 205 Wis. 2d at 384. 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 [circuit] court." ***Id.*** "In other words, 'there must be shown the existence of an error of fact which was unknown at the time of [the plea] and which is of such a nature that knowledge of its existence at the time ... would have prevented the entry of judgment.'" ***State ex rel. Patel v. State***, 2012 WI App 117, ¶13, 344 Wis. 2d 405, 824 N.W.2d 862 (citation omitted) (brackets and ellipsis in ***Patel***). The writ of *coram nobis* "does not 'correct errors of law and of fact appearing on the record since such errors are traditionally corrected by appeals[.]'" *See* ***id.*** (citation omitted).

Here, we will assume that Rowell, although he appears to be incarcerated on another matter, has no other remedy available in this case because he has completed the sentence imposed. Nevertheless, he is not entitled to the writ because he cannot fulfill the second prerequisite.

Rowell alleges at least five errors by the circuit court in the plea colloquy. He claims that the court failed to advise him regarding: the nature of the charge and range of penalties; waiver of the jury trial; the difference between a bench and jury trial; "the right to compulsory process"; and the right to be free of self-incrimination or the right to remain silent.[2] However, any "alleged defect in the plea colloquy is undoubtedly an error appearing on the record." *See* ***id.***,

[2] We note that not all of these claims of error appear to be violations of the circuit court's duties during a plea colloquy. *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. However, a circuit court is at least required to "[a]ddress the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted." *See* WIS. STAT. § 971.08(1)(a).

¶23. That is, an error in the plea colloquy is not an unknown error, but one "easily discernible from a review of the record[.]" *See **id.*** "This is the type of error to be corrected by appeal." ***Id.***

Rowell also does not demonstrate that the alleged errors would have prevented entry of the judgment of conviction. For instance, he does not claim that, but for the errors in the colloquy, he would not have entered his plea. *See **id.***, ¶24. Thus, we discern no erroneous exercise of discretion in the circuit court's denial of the writ.

Rowell also asserts that we should grant discretionary relief in the interest of justice. "In an appeal to the court of appeals, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from[.]" WIS. STAT. § 752.35. Rowell claims justice miscarried when the circuit court failed to fulfill its duties during his plea colloquy. He also argues he was never appointed postconviction or appellate counsel as a matter of right.

The order appealed from in this matter is the order denying the writ of *coram nobis*. Whether the writ was properly denied has been fully tried. We are unpersuaded that discretionary reversal of that order is warranted.

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals