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**DISTRICT III**

June 1, 2022

To:

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Clerk of Circuit Court  
Brown County Courthouse  
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Robert E. Hammersley  
309 Bayside Road  
Little Suamico, WI 54141

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

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2020AP837	State of Wisconsin v. Robert E. Hammersley
2020AP838	(L.C. Nos. 2005CF361, 2008CF1114)

Before Stark, P.J., Hruz and Gill, 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).**

Robert Hammersley, pro se, appeals an order denying his WIS. STAT. § 974.06 (2019-20)<sup>1</sup> motion for postconviction relief or, alternatively, for a writ of error coram nobis. Hammersley also appeals the order denying his motion for reconsideration. Hammersley challenges two previous convictions for operating while intoxicated (“OWI”). Based upon our review of the briefs and records, we conclude at conference that this case is appropriate for summary disposition. We reject Hammersley’s arguments, and we summarily affirm the orders. *See* WIS. STAT. RULE 809.21.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In Brown County case No. 2005CF361, Hammersley was convicted upon his guilty plea of OWI, as a fifth offense. On August 30, 2005, the circuit court sentenced him to eighteen months' initial confinement and twenty-four months' extended supervision. In Brown County case No. 2008CF1114, Hammersley was convicted upon a jury's verdict of OWI, as a sixth offense. On April 27, 2010, Hammersley was sentenced to three years' initial confinement and three years' extended supervision.

In December 2019, Hammersley filed the underlying WIS. STAT. § 974.06 motion and alternative request for a writ of error coram nobis.<sup>2</sup> The circuit court denied both the motion and the writ request, as well as Hammersley's subsequent motion for reconsideration. These appeals follow.

With respect to Hammersley's request for relief pursuant to WIS. STAT. § 974.06, that statute permits defendants to bring jurisdictional or constitutional challenges to their sentences after the time for filing an appeal or postconviction motion has otherwise expired. *See* § 974.06(1). However, to bring a motion under § 974.06, a defendant must be "a prisoner in custody under sentence of a court," and must be "claiming the right to be released upon the ground that the sentence was imposed" in violation of a constitutional or jurisdictional provision or is otherwise subject to collateral attack. Sec. 974.06(1). Thus, a defendant who is no longer in custody may not bring a motion under § 974.06. *Jessen v. State*, 95 Wis. 2d 207, 211, 290 N.W.2d 685 (1980). Hammersley concedes, and the records show, that he is no longer in

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<sup>2</sup> The filing was identified by Hammersley as follows: "974.06 Motion and/or Coram Nobis for Post-Conviction Reviewal of the Entrapped-Into Hijacking of the Warrantless Unannounced Home Invasion Parole Search Subterfuge for Criminal Arrests, on October 17, 2008, with *Blackjacked Parole-Held Warrantless Forced Gurney-Bound Head-Clasped Demanded Blood Extraction*." (Alterations in original.)

custody for his convictions in case Nos. 2005CF361 and 2008CF1114. Therefore, he is not entitled to relief under § 974.06.

Hammersley's alternative request for a writ of error coram nobis likewise fails. To obtain a writ of coram nobis, a petitioner must establish: (1) that "no other remedy is available"; and (2) that there was "an error of fact which was unknown at the time of [the trial or] [the plea] and which is of such a nature that knowledge of its existence at the time ... would have prevented the entry of judgment." See *State ex rel. Patel v. State*, 2012 WI App 117, ¶13, 344 Wis. 2d 405, 824 N.W.2d 862 (citation omitted). The writ of coram nobis "is of very limited scope," and it is not applicable to remedy errors traditionally corrected by appeal or by writ of habeas corpus. See *Jessen*, 95 Wis. 2d at 213-14. As a result, coram nobis is not available to correct legal errors, including alleged constitutional errors. *State v. Kanieski*, 30 Wis. 2d 573, 577-79, 141 N.W.2d 196 (1966). Although a circuit court has discretion to grant or deny a writ of coram nobis, we may independently review the petition to determine whether, as a matter of law, there is any legal basis for the court's exercise of discretion. *State v. Heimermann*, 205 Wis. 2d 376, 386-87, 556 N.W.2d 756 (Ct. App. 1996).

While Hammersley, a criminal defendant no longer serving a sentence for the convictions challenged, has cleared the first hurdle required to obtain the writ, he has not cleared the second. Hammersley listed forty-one grounds to support his motion in the circuit court, including, as best we can understand, claims of entrapment, police misconduct, unlawful parole seizure, unlawful arrest, a warrantless gurney-bound blood draw, blood test forgery, prosecutorial misconduct, expert witness perjury, a fraudulent police report, and perjured blood chain trial testimony.

As the circuit court stated in denying Hammersley's motion, it appears Hammersley sought to collaterally attack his prior OWI convictions to avoid an enhanced penalty for his current OWI charges. Although Hammersley maintains that his actual innocence with respect to his prior OWI convictions permits the writ he seeks, and that failing to grant the writ constitutes a manifest injustice, a defendant cannot attack the legal basis for a prior conviction through a writ of error coram nobis. See *Kanieski*, 30 Wis. 2d at 577-79. Ultimately, Hammersley has failed to show that the court incorrectly interpreted his petition as seeking to correct a legal error, rather than a factual error, as discussed above. Therefore, we conclude that the court properly denied Hammersley's alternative request for a writ of error coram nobis.

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*