

In 1995, a jury convicted Smith of attempted first-degree intentional homicide while armed. The trial court sentenced Smith to fifteen years of imprisonment. The sentence expired on August 29, 2011.

On May 25, 2021, Smith filed a petition for a writ of *coram nobis* arguing that his right to a speedy trial was violated and that the trial court lacked subject matter jurisdiction over his case. The circuit court² denied the petition, stating that Smith’s arguments were legal in nature and therefore a writ of *coram nobis* was an inappropriate mechanism for relief as it cannot be granted to correct an alleged error of law. Smith then filed a “petition for a writ of error,” effectively raising the same arguments. The circuit court denied the petition, construing Smith’s petition as a second attempt to litigate his legal claims. This appeal follows.

On appeal, Smith contends that the circuit court erred in denying his petitions and contends that a writ of *coram nobis* was an appropriate mechanism to raise his claims. Smith is mistaken.

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 (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 213-14. More succinctly, it is a “writ of error directed to a court for review of

² We refer to the court that presided over Smith’s trial as “the trial court,” and the court that denied the petitions underlying this appeal as “the circuit court.”

its own judgment predicated on alleged errors of fact.” *Coram Nobis*, BLACK’S LAW DICTIONARY 388 (9th ed. 2009).

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 circuit court’s exercise of discretion. *State v. Heimermann*, 205 Wis. 2d 376, 386-87, 556 N.W.2d 756 (Ct. App. 1996).

As the circuit court noted, both of Smith’s petitions alleged *legal errors*—a speedy trial violation and a lack of subject matter jurisdiction. Neither complaint falls within the limited scope of a writ of *coram nobis* by alleging a factual error. As the State notes, even if Smith alleged errors of fact, he did not allege facts that do not appear in the record. Smith’s speedy trial argument rests on events and alleged delays that would be reviewable in the record. Smith also raised the same arguments in a previous motion for postconviction relief.

As to Smith’s writ of error, we agree with the circuit court that Smith simply attempted to restyle the arguments raised in his writ of *coram nobis* and correctly denied his petition.

Therefore,

IT IS ORDERED that the orders are 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