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DISTRICT III

February 28, 2023

To:

Hon. Michael H. Bloom
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Brenda Behrle
Clerk of Circuit Court
Oneida County Courthouse
Electronic Notice

Donna Kikkert
W1384 1st Avenue, Apt. 13
Gleason, WI 54435

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

2022AP4

Donna Kikkert v. State of Wisconsin/Oneida County
(L. C. No. 2021CV172)

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).

Donna Kikkert, pro se, appeals from an order denying her petition for a writ of coram nobis. In her petition, Kikkert asserted that she received ineffective assistance of counsel because her trial counsel advised her to plead no contest in May of 2001 to a charge of interference with child custody in Oneida County case No. 2001CF70, without explaining the “ramifications and results” of the plea. Kikkert further asserted that because of her conviction, she has been denied employment and housing opportunities, and her relationship with her child has suffered irrevocable damage. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22). We summarily affirm.

The circuit court took judicial notice that Kikkert’s no-contest plea to the charge in case No. 2001CF70 was offered pursuant to a deferred entry of judgment agreement and that a judgment of acquittal was ultimately entered in the case on April 4, 2002. The court concluded that no further relief was possible in that case even assuming that a writ of coram nobis could be used to address an ineffective assistance of counsel claim such as the one that Kikkert sought to raise.

In this appeal, Kikkert first contends that the circuit court erred by “choosing not to include” Oneida County case No. 2002CF169 in its decision.¹ However, “[a] party must raise an issue with sufficient prominence such that the ... court understands that it is called upon to make a ruling.” *Schwittay v. Sheboygan Falls Mut. Ins. Co.*, 2001 WI App 140, ¶16 n.3, 246 Wis. 2d 385, 630 N.W.2d 772. Kikkert’s writ petition did not list case No. 2002CF169 in its caption, and the text of the petition referred only to the plea she entered in May of 2001 in case No. 2001CF70. The court did not err by failing to address a claim that Kikkert did not raise.

Kikkert does not dispute the circuit court’s determination that her writ petition was moot with respect to case No. 2001CF70. The lack of available relief in the only case from which Kikkert explicitly sought relief is dispositive of this appeal. Given Kikkert’s pro se status, we additionally note that, even if Kikkert had included case No. 2002CF169 in her writ petition, she would still not be entitled to relief.

¹ Docket entries show that Kikkert pled no contest to another charge of interfering with child custody in case No. 2002CF169.

A writ of coram nobis allows the circuit court to correct “an error of fact which was unknown at the time of trial and which is of such a nature that knowledge of its existence at the time of trial would have prevented the entry of judgment.” *State v. Heimermann*, 205 Wis. 2d 376, 381-83, 556 N.W.2d 756 (Ct. App. 1996). A claim of ineffective assistance of counsel ultimately presents legal questions as to whether counsel’s conduct violated professional standards and whether the defendant was prejudiced by such deficient performance. *State v. Sholar*, 2018 WI 53, ¶¶32, 35, 381 Wis. 2d 560, 912 N.W.2d 89. Therefore, a claim of ineffective assistance of counsel does not present the type of “error of fact” that could be corrected by a writ of coram nobis.

Moreover, trial counsel is only required to inform a defendant about the direct consequences of a plea, not collateral consequences. *State v. LeMere*, 2016 WI 41, ¶30, 368 Wis. 2d 624, 879 N.W.2d 580. The direct consequences of a plea “are those that have a definite, immediate, and largely automatic effect on the range of a defendant’s punishment.” *Id.*, ¶31 (citation omitted). In contrast, collateral consequences are indirect and, rather than flowing from the conviction, “‘may be contingent on a future proceeding in which a defendant’s subsequent behavior affects the determination’ or may ‘rest[] not with the sentencing court, but instead with a different tribunal or government agency.’” *Id.* (alteration in original; citation omitted;). A conviction’s effects upon a defendant’s employment and housing opportunities or relationship with a child are all collateral consequences of a plea.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21 (2021-22).

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

Sheila T. Reiff
Clerk of Court of Appeals