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DISTRICT III

January 15, 2013

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

2011AP2998

State v. Robert E. Hammersley (L. C. #2005CF361)

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

This is another in a series of motions/petitions/appeals filed by Robert Hammersley, pro se, arising out of his attempts to collaterally challenge a 2003 Arizona conviction for operating while intoxicated that he claims was used to improperly enhance his subsequent OWI convictions. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21.¹

¹ References to the Wisconsin Statutes are to the 2009-10 version unless noted.

Hammersley's current appeal is from an order denying a motion for a writ of error coram nobis, contending the Arizona conviction could not be counted as a prior offense for his 2005 fifth offense OWI. However, he previously raised this argument in a WIS. STAT. § 974.06 motion, where we determined that he could not use § 974.06 to collaterally attack his prior conviction. See *State v. Hammersley*, 2011AP1999, unpublished slip op. and opinion (WI App Feb. 15, 2012). We noted in that decision that Hammersley had filed his motion for a writ of coram nobis, but did not address that issue because the motion was still pending in the circuit court.² *Id.* at 1-2.

We also denied numerous petitions for writs of habeas corpus Hammersley filed seeking to collaterally challenge the Arizona conviction, including a habeas challenge to his conviction for fifth-offense OWI. See *State v. Hammersley*, 2012AP816-W, unpublished slip op. and opinion (WI App Mar. 22, 2012). In that instance, we noted Hammersley had conceded he challenged the Arizona conviction, the Arizona courts rejected his argument, and that he “appealed this decision on 12/5/11.” *Id.* at 2. We concluded Hammersley had failed to demonstrate that he had no other adequate remedy available at law. *Id.* We also concluded his arguments were undeveloped and conclusory. *Id.* at 2-3.

Hammersley's current appeal is also undeveloped and conclusory, and we shall therefore not consider it. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 93 (Ct. App.

² The circuit court's decision denying Hammersley's motion was issued November 23, 2011. The notice of appeal in case No. 2011AP1999 was filed in August 2011. The circuit court's decision was issued while this case was in this court, however, the circuit court decision also addressed Hammersley's request for reconsideration of his WIS. STAT. § 974.06 motion. The court was permitted to make that ruling, see *State v. Schulpus*, 2004 WI App 39, ¶33 n.8, 270 Wis. 2d 427, 678 N.W.2d 369, and could also properly decide Hammersley's motion for writ of error coram nobis.

1988). A party must do more than toss two pages of legal standards into the air with the hope that a court will arrange them into a viable, fact-supported argument.

Moreover, even on the merits the appeal fails. A legal error may not be challenged by writ of error coram nobis. Such a writ may be granted in the discretion of the circuit court when the applicant shows that there is an error of fact not appearing in the record which, if known before the judgment was entered, would have prevented its entry. See *Jessen v. State*, 95 Wis. 2d 207, 213-14, 290 N.W.2d 685 (1980); *State v. Schill*, 93 Wis. 2d 361, 373-74, 286 N.W.2d 836 (1980). A writ of coram nobis is a limited writ and not applicable to remedy errors traditionally corrected by appeal or writs of habeas corpus. *Jessen*, 95 Wis. 2d at 213-14. As a result, coram nobis is not available to correct legal errors, including constitutional ones. *State v. Kanieski*, 30 Wis. 2d 573, 577-79, 141 N.W.2d 196 (1966).

Hammersley's current motion asserted his Arizona conviction was invalid because of his court appearances by telephone. The circuit court also construed the motion as raising a challenge to his waiver of counsel in that case. Hammersley also claimed his attorney was ineffective for failing to investigate the Arizona conviction. These are allegations of legal error. The motion was properly denied.

Upon the foregoing,

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

Diane M. Fremgen
Clerk of Court of Appeals