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DISTRICT IV

January 10, 2017

To:

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

2016AP258

State of Wisconsin v. William Norman Staples
(L.C. # 1977CF2841)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

William Staples appeals an order denying his petition for a writ of error 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 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In 1977, Staples pled guilty to assault by a prisoner and was sentenced to two years, to be served consecutively to other sentences. Staples is no longer incarcerated under a Wisconsin sentence. However, he is incarcerated under a federal sentence, and he argues that his federal sentence was enhanced by virtue of the 1977 conviction.

In his petition, Staples argued that his trial counsel was ineffective for not filing a notice of appeal. As a remedy for that claimed ineffectiveness, Staples asked that his conviction be expunged.

A writ of error coram nobis is a limited writ and is not applicable to correct errors traditionally corrected by appeal or writs of habeas corpus. *Jessen v. State*, 95 Wis. 2d 207, 213-14, 290 N.W.2d 685 (1980). The issuance of the writ lies within the circuit court's discretion. *Id.* at 213. A person who has already served a sentence may seek a writ of error coram nobis. *See State v. Heimermann*, 205 Wis. 2d 376, 381-84, 556 N.W.2d 756 (Ct. App. 1996). A person seeking the writ must show “the existence of 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.” *Id.* at 383 (quoted source omitted).

The circuit court here correctly denied the petition. The action that Staples complains about took place, by definition, after his conviction. His attorney's failure to file a notice of appeal is not an “error of fact ... unknown at the time of trial ... [which] would have prevented” the conviction. *See id.* A writ of error coram nobis may not be used to address postconviction events.

The State argues that Staples is an abusive serial litigator and he should be barred from further challenges to his conviction. The State asks this court to require Staples to obtain prior

approval for any future filings, on a case-by-case basis, so as to prevent additional frivolous litigation. *See State v. Casteel*, 2001 WI App 188, 247 Wis. 2d 451, 634 N.W.2d 338.

We decline to do so. This court acknowledges that, when incarcerated in Wisconsin, Staples often litigated conditions of confinement and similar issues. And, this is not the first court challenge to this conviction.² However, as to this conviction, Staples has not yet engaged in that type of pattern of abusive, repetitive litigation that would warrant the issuance of a *Casteel*-type order. *See id.*, ¶¶2-12 (chronicling thirteen postconviction challenges).

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

² The record shows that Staples has previously sought sentence modification and expungement.