

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 7, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP850-CR**

**Cir. Ct. No. 2004CT882**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**AMAN D. SINGH,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
STEPHEN E. EHLKE, Judge. *Affirmed.*

¶1 SHERMAN, J.<sup>1</sup> Aman Singh, pro se, appeals an order of the circuit court denying his petition for writ of *coram nobis*. Singh argues that he is entitled to writ of *coram nobis* because his conviction for second offense OWI violated

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

double jeopardy and because an out of state administrative suspension was unlawfully used to enhance his OWI conviction. For the reasons discussed below, I reject Singh's arguments and affirm.<sup>2</sup>

## BACKGROUND

¶2 In January 2004, Singh was found guilty of first offense operating a motor vehicle while intoxicated (OWI). In May 2004, the circuit court entered an order reopening and dismissing that case, and Singh was charged with, and ultimately convicted, following his plea, of second offense OWI. Singh was sentenced to ten days in jail and his license was revoked for fifteen months, and he was awarded sentence credit for the period of time previously served.<sup>3</sup>

¶3 In February 2015, Singh filed a petition for writ of *coram nobis* arguing that his second offense OWI conviction violated double jeopardy because he had already been tried and convicted (for first offense OWI) for the conduct that underlay his second offense OWI. The circuit court denied Singh's petition. Singh appeals.

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<sup>2</sup> Singh's brief fails to conform to the appellate briefing requirements of WIS. STAT. § 809.19, in particular subsections (1)(b) (statement of the issues presented for review and how the circuit court decided them); (1)(d) (statement of the case); (1)(e) (citations to those portions of the record relied upon in the argument section); and (2)(a) (appendix containing the findings or opinions of the circuit court and those portions of the record essential to an understanding of the issues raised). For this reason alone, I could decline to address any of Singh's arguments. See *State v. Pettit*, 171 Wis. 2d 627, 642, 492 N.W.2d 633 (Ct. App. 1992).

<sup>3</sup> The record before this court does not contain the record of Singh's January 2004 conviction, nor any records relating to the reopening and dismissal of that case. The facts, as set forth above, are taken from the circuit court's order denying Singh's petition for writ of *coram nobis* and the May 2004 judgment of conviction.

## DISCUSSION

¶4 We explained the scope of the writ of *coram nobis* in *State ex rel. Patel v. State*, 2012 WI App 117, ¶¶12-13, 344 Wis. 2d 405, 824 N.W.2d 862.

The writ of *coram nobis* is a discretionary writ of “very limited scope” that is “addressed to the [circuit] court.” *Jessen v. State*, 95 Wis. 2d 207, 213, 290 N.W.2d 685 (1980). “The purpose of the writ is to give the [circuit] 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 the attention of the [circuit] court.” *Id.* at 213–14, 290 N.W.2d 685; *see also Ernst v. State*, 179 Wis. 646, 652, 192 N.W. 65 (1923) (“[T]he principal aim of the writ of error *coram nobis* [is] to afford the court in which the action was tried an opportunity to correct its own record.”).

“A person seeking a writ of *coram nobis* must pass over two hurdles.” *State v. Heimermann*, 205 Wis. 2d 376, 384, 556 N.W.2d 756 (Ct. App. 1996). First, the individual must establish that no other remedy is available. *Id.* For example, a criminal defendant seeking the writ must not be in custody because in that case WIS. STAT. § 974.06 would provide a remedy. *See Heimermann*, 205 Wis. 2d at 376, 556 N.W.2d 756. “Second, the factual error that the petitioner wishes to correct must be crucial to the ultimate judgment and the factual finding to which the alleged factual error is directed must not have been previously visited or ‘passed on’ by the [circuit] court.” *Id.* In other words, “there must be shown the existence of an error of fact which was unknown at the time of [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 Jessen*, 95 Wis. 2d at 214, 290 N.W.2d 685.

¶5 The State concedes that Singh may pass the first hurdle (no other available remedy), but argues that Singh cannot pass the second hurdle because the error he relies upon is not a factual error, but rather a legal one. I agree.

¶6 Whether a defendant’s conviction violates his or her double jeopardy rights is a question of law. *State v. Saucedo*, 168 Wis. 2d 486, 492, 485 N.W.2d 1

(1992). Whether an out of state implied consent suspension may be used to statutorily enhance an OWI penalty is a question of statutory interpretation, which is also a question of law. *See* WIS. STAT. § 343.307(1) (setting forth which convictions, suspensions, or revocations count as prior offenses in an OWI case); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *State v. Cole*, 2000 WI App 52, ¶3, 233 Wis. 2d 577, 608 N.W.2d 432 (statutory interpretation is a question of law). Accordingly, I affirm the circuit court’s order denying Singh’s petition.<sup>4</sup>

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

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<sup>4</sup> Singh argues for the first time in his reply brief that regardless of his petition for writ of *coram nobis*, he is entitled to relief because his sentence was excessive. This court does not address issues or arguments raised for the first time in a reply brief. *See Richman v. Security Savings & Loan Ass’n*, 57 Wis. 2d 358, 361, 204 N.W.2d 511 (1973).

