

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 29, 1996

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

NOTICE

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

No. 95-2675

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**STATE EX REL.
PHILLIP E. BACON,**

Petitioner-Appellant,

v.

JOAN E. OSTY,

Respondent-Respondent.

APPEAL from an order of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Phillip Bacon, an inmate in the Wisconsin State Prison System, appeals a trial court order that denied his petition for a writ of mandamus against the trial court clerk. He sought to compel the clerk to provide him copies of transcripts and other papers from his criminal and juvenile cases under the open records law. He also sought damages for delay by the clerk. He claims that he never received all of his documents. The trial

court denied Bacon's mandamus petition on the ground that the open records law did not cover transcripts and that Bacon had received all transcripts except one official was then still seeking to transcribe. The trial court's decision was discretionary. *State ex rel. Morke v. Wisconsin Parole Bd.*, 148 Wis.2d 250, 252, 434 N.W.2d 824, 825 (Ct. App. 1988). We conclude that the trial court correctly exercised its discretion, and therefore affirm the trial court's order.

First, § 973.08, STATS., superseded the open records law and specifically controlled Bacon's request to the extent that he sought transcripts. This statute gives trial courts the power to deny litigants transcripts of their criminal proceedings under certain circumstances. As the more specific statute in terms of transcripts, it took precedence over the more general open records law. See *State ex rel. Gutbrod v. Wolke*, 49 Wis.2d 736, 747 n.12, 183 N.W.2d 161, 167 n.12 (1971); § 19.35, STATS. Section 973.08 takes transcripts out of the hands of the trial court clerk and places them in the hands of the trial court itself. As a result, Bacon had no legal basis to demand transcripts directly from the trial court clerk or to later seek relief by writ of mandamus against the trial court clerk.

Second, although Bacon claims on appeal that the trial court clerk improperly failed to supply him copies of other papers in his criminal case files, Bacon never adequately apprised the trial court of this claim. At the hearing, the trial court stated several times that Bacon had received everything except the transcripts. Bacon never adequately corrected the trial court's misapprehension if the trial court's statements were inaccurate. Litigants cannot complain on appeal if they know of but do not adequately apprise trial courts of erroneous statements. See *In re Shawn B.N.*, 173 Wis.2d 343, 372, 497 N.W.2d 141, 152 (Ct. App. 1992). We therefore will not review this claimed error. Last, Bacon conceded in the trial court that the open records law did not apply to his juvenile records. In sum, we have no basis to overrule the trial court.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.