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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

December 18, 2013

To:

Hon. James Evenson
Circuit Court Judge
Sauk Co. Courthouse
515 Oak Street
Baraboo, WI 53913-0449

Vicki Meister
Clerk of Circuit Court
Sauk Co. Courthouse
515 Oak Street
Baraboo, WI 53913-0449

Kevin R. Calkins
District Attorney
515 Oak Street
Baraboo, WI 53913

Katherine Desmond Lloyd
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Chad A. Stites
P. O. Box 6111
Madison, WI 53716

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

2012AP1791

State of Wisconsin ex rel. Chad A. Stites v. State of Wisconsin
(L.C. # 2000CF179)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Chad Stites appeals an order of the circuit court, which dismissed his petition for a writ of 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 (2011-12).¹ We summarily affirm.

In October 2000, Stites pled no contest to operating under the influence of an intoxicant (OWI), contrary to WIS. STAT. § 346.63(1)(a) (1999-2000). Stites did not appeal. In July 2012,

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

he filed a petition for a writ of coram nobis, arguing that his attorney had been ineffective for failing to address the fact that Stites' blood alcohol concentration was below the legal limit for operating a vehicle. The circuit court denied Stites' petition, reasoning that Stites was convicted of OWI, not of operating with a prohibited blood alcohol concentration, and that he therefore had not provided a sufficient factual basis entitling him to a hearing. Stites now appeals.

The decision to grant or deny a petition for a writ of coram nobis is a discretionary decision of the circuit court. *See Jessen v. State*, 95 Wis. 2d 207, 213, 290 N.W.2d 685 (1980). This court will uphold a circuit court's exercise of discretion if it logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *State v. Malcom*, 2001 WI App 291, ¶12, 249 Wis. 2d 403, 638 N.W.2d 918.

We conclude that the circuit court properly exercised its discretion in denying Stites' petition for writ of coram nobis. The State was not required to prove that Stites had a prohibited blood alcohol concentration in order to prove all of the elements for an OWI conviction under WIS. STAT. § 346.63(1)(a) (1999-2000). Therefore, Stites' counsel was not ineffective for failing to address the issue of Stites' blood alcohol concentration, and the circuit court properly denied the writ petition.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals