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DISTRICT II

January 14, 2026

To:

Hon. Ralph M. Ramirez
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Jennifer R. Smart
Electronic Notice

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

2024AP2239 State of Wisconsin v. Jennifer R. Smart (L.C. #1998CF761)

Before Gundrum, Grogan, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jennifer R. Smart appeals a circuit court order denying her "postconviction" motion. 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 (2023-24).[1] For the following reasons, we affirm.

In 1999, Smart pled no contest to two counts of abduction of another's child and one count of causing a child to expose genitals. Other criminal charges were dismissed and read in.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

The circuit court imposed and stayed a prison sentence, and placed Smart on probation. Smart was discharged from probation in 2008. In 2021, Smart moved the court to vacate her conviction and remove the requirement that she register as a sex offender. At a hearing, the court advised Smart that her direct appeal rights had expired in 1999.

In May 2023, Smart filed a petition for writ of coram nobis. She generally argued her trial counsel was ineffective, the charges lacked a factual basis, and her plea was unknowing, involuntary, and unintelligent. The circuit court denied her petition on May 26, 2023, and Smart did not appeal. In August 2023, Smart filed a second petition for writ of coram nobis. The court again denied her petition, and Smart did not appeal.

In August 2024, Smart filed a notice of intent to pursue postconviction relief. She also filed a "postconviction" motion. She argued trial counsel was ineffective, the plea colloquy was insufficient, and the factual basis underlying her convictions was inadequate. Following a hearing, the circuit court denied Smart's motion. The court explained "the time frame for requesting those remedies, has long been exhausted." The court also stated it had reviewed the transcript from the plea hearing and the criminal complaint, and determined "there isn't any equitable reason for this Court to take any action or to consider the post conviction relief that she is alleging resulted in a wrongful conviction." Smart appeals.

On appeal, Smart does not address the circuit court's reasoning for denying her motion. Instead, she directly argues trial counsel was ineffective, the plea colloquy was insufficient, and the factual basis underlying her convictions is inadequate. However, as recognized by the court, the time for Smart to directly appeal her conviction has long since expired. *See* WIS. STAT. § 974.02(1); WIS. STAT. RULE 809.30(2)(b). Although the court suggested Smart's current

avenue to obtain relief from her conviction was outlined and limited by WIS. STAT. § 974.06, we agree with the State that because Smart is no longer "a prisoner in custody under sentence of a court," § 974.06 remedies are unavailable to Smart. *See* § 974.06(1); ***Jessen v. State***, 95 Wis. 2d 207, 211, 290 N.W.2d 685 (1980) ("[T]he remedy provided in [§] 974.06 is available solely to those persons in custody under sentence of a court."); *see also* ***Jessen***, 95 Wis. 2d at 211 (court lacks competency to consider a § 974.06 motion brought by a person who is not in custody).

We also agree with the State that because Smart is no longer in custody, her potential avenue for relief is via a writ of coram nobis. *See* ***State v. Heimermann***, 205 Wis. 2d 376, 380, 556 N.W.2d 756 (Ct. App. 1996). We therefore construe Smart's August 2024 motion as a third petition for writ of coram nobis.

To be entitled to a writ of coram nobis, a petitioner must establish, in part, that the error complained of was not previously visited or passed on by the circuit court. *See* ***id.*** at 383-84 ("If the factfinder has already been directed to an issue and has passed judgment on this issue, then a writ of *coram nobis* may not be used to simply revisit this issue."). Here, in 2023, Smart directed the court to the issues that she now raises, and the court denied her petitions. Smart is not entitled to successive petitions raising the same issues. *See* ***id.*** We conclude the court properly denied Smart's August 2024 petition.

In any event, we also agree with the State that the doctrine of laches bars Smart's claims. "Laches is an equitable defense[,]" ***Sawyer v. Midelfort***, 217 Wis. 2d 795, 806, 579 N.W.2d 268 (Ct. App. 1998), *aff'd*, 227 Wis. 2d 124, 595 N.W.2d 423 (1999), that may be invoked in response to a petition for a writ of coram nobis, *see* ***United States v. Darnell***, 716 F.2d 479, 480-81 (7th Cir. 1983). Laches requires: "(1) unreasonable delay; (2) lack of knowledge on the

part of the party asserting the defense that the other party would assert the right on which he bases his suit; and (3) prejudice to the party asserting the defense in the event the action is maintained." ***State v. Prihoda***, 2000 WI 123, ¶37, 239 Wis. 2d 244, 618 N.W.2d 857.

In this case, Smart waited over 22 years to challenge her convictions for the first time. Nothing suggests the State had knowledge that Smart would assert claims that trial counsel was ineffective, the plea colloquy was insufficient, and the factual basis underlying her convictions was inadequate. Further, to the extent Smart's current challenges are even subject to coram nobis, *see* ***Heimermann***, 205 Wis. 2d at 383-84 (coram nobis is only available to correct factual errors), Smart's delay has prejudiced the State. As aptly explained by the State:

> This case is "a textbook example of the problems arising from an inordinate delay in seeking relief." ***Darnell***, 716 F.2d at 481. Ineffective assistance of counsel claims require testimony from defense counsel to determine whether they met their Sixth Amendment obligations, and it would be beyond absurd to expect a defense attorney to recall what they considered and discussed with a client leading up to a plea nearly a quarter of a century earlier. Additionally, the only transcript that appears to have been prepared following Smart's convictions in 1999 prior to the hearings held in 2021 and 2024 is a transcript of the plea hearing prepared in 2002…. Documents, even any minutes, from the original case file are sparse, and the chance that the court reporters from the rest of the proceedings have retained notes to create transcripts for an additional 14 years beyond the 10-year retention period is almost zero. *See* SCR 72.01(47).… It would be nearly impossible for the State to establish the voluntariness of the proceedings now or to take this case to trial.

(Footnote omitted).

We agree with the State. The doctrine of laches bars Smart's current claims, and the circuit court properly dismissed her petition. Therefore,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals