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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

09-28-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2015AP850-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

AMAN D. SINGH,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 15, THE HONORABLE JUDGE STEPHEN EHLKE, PRESIDING

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State requests neither oral argument nor publication. This court may decide this case by applying well-established legal principles to the facts presented.

SUPPLEMENTAL STATEMENT OF THE CASE AND STATEMENT OF FACTS

As respondent, the State exercises its option not to present a full statement of the case. See Wis. Stat. § 809.19(3)(a)2.¹ Instead, the State presents the following summary and will present additional facts, if necessary, in the argument portion of its brief.

Singh was convicted of an Implied Consent violation (refusal) in the State of Illinois on September 12, 2001. (R. 3, p. 1, 7). On May 13, 2005, Singh was convicted of Operating While under Influence (2nd) in Dane County Circuit Court Case No. 2004CT882. (R. 19, p. 1). Singh did not file a direct appeal with the circuit court, but did petition the circuit court for a writ of *coram nobis* on February 16, 2015. (R. 21, p. 1). Dane County Circuit Court Judge

¹ Unless indicated otherwise, all citations to Wisconsin Statutes refer to the 2013-14 edition.

Stephen Ehlke denied Singh's petition on March 9, 2015. (R. 22, p. 1).

ARGUMENT

I. THIS COURT SHOULD DECLINE TO ADDRESS THE MERITS OF SINGH'S CLAIM BECAUSE SINGH VIOLATED NUMEROUS MATERIAL AND SUBSTANTIAL RULES OF APPELLATE PROCEDURE

This court may decline to address the merits of Singh's claim because his appellate brief is inadequate to show any error. It does not comply with the rules of appellate procedure. See Wis. Stat. § 809.83(2). The statement of issues in Singh's brief does not reflect how (or whether) the trial court decided the issues, in violation of Wis. Stats. § 809.19(1)(b). Several of the facts recited in the statement of the case in Singh's brief are not supported by citations to the record, in violation of Wis. Stat. § 809.19(1)(d). The argument section of Singh's brief contains no record citations. See Wis. Stat. § 809.19(1)(e). It is not this court's responsibility to sift through the record to locate the facts on which an appellant relies. See *State v. Thomas*, 2013 WI App 78, ¶ 1 n.3, 348 Wis. 2d 699, 834 N.W.2d 425 (citing *Tam v. Luk*, 154 Wis. 2d 282, 291 n.5, 453 Wis. 2d 158 (Ct. App. 1999)).

Wis. Stat. § 809.19(2)(a) requires the appellant's brief to contain the findings or opinions of the circuit court, and limited portions of the record essential to an

understanding of the issues raised. Singh's brief does not contain an appendix. This leaves Singh's brief lacking the findings of the circuit court and any portion of the record. It is the appellant's responsibility to ensure completion of the appellate record. See *State v. McAttee*, 2001 WI App 262, ¶ 5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774.

The Wisconsin Supreme Court requires pro se litigants to satisfy all of the procedural requirements that govern appeals. See *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16, 20, cert. denied, 506 U.S. 894, 113 S.Ct. 269, 121 L.Ed.2d 198 (1992). The rules of appellate procedure were not developed to make it impossible for a pro se appellant to represent himself; they were developed to compel an appellant to focus the court's attention on the issues of fact and law that the appellant contends were mistakenly decided by the trial court. Compliance with the rules is required because a high-volume intermediate appellate court is an error-correcting court that cannot take time either to sift the record for facts that might support an appellant's contentions or develop legal argument on behalf of the appellant. See *Kepling v. Hardware Mut. Casualty Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d

321, 323 (1964); *State v. Gulrud*, 140 Wis. 2d 721, 730, 412 N.W.2d 139, 142-43 (Ct. App. 1987).

Singh fails to sufficiently develop any legal argument based on concrete references and proper citations to pertinent portions of the record and the application of governing legal authority. Singh's arguments can thus be rejected. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to review inadequately developed issues).

II. THE CIRCUIT COURT PROPERLY DETERMINED THAT SINGH WAS NOT ENTITLED TO A WRIT OF CORAM NOBIS

A. Applicable Legal Principles And Standard Of Review

Coram nobis "is a common law remedy which empowers the trial court to correct its own record." *State v. Heimermann*, 205 Wis. 2d 376, 381-82, 556 N.W.2d 756 (Ct. App. 1996) (citing *Jessen v. State*, 95 Wis. 2d 207, 212, 213-14, 290 N.W.2d 685 (1980)); see also *Houston v. State*, 7 Wis. 2d 348, 96 N.W.2d 343 (1959). It is an "extraordinary remedy" meant to be granted "only under circumstances compelling such action to achieve justice," *United States v. Morgan*, 346 U.S. 502, 511 (1954), and

circuit courts are to "exercise[] . . . the utmost caution and care" when considering it. *Ernst v. State*, 181 Wis. 155, 158, 193 N.W. 978 (1923); see also *State v. Kanieski*, 30 Wis. 2d 573, 576, 141 N.W.2d 196 (1966); *State v. Dingman*, 239 Wis. 188, 193, 300 N.W. 244 (1941); Albert F. Neumann, *Comments, Criminal Law - Writ of Error Coram Nobis*, 11 Wis. L. Rev. 248, 252 (1935-36). It is limited to the rare case where a defendant can 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." *Jessen*, 95 Wis. 2d at 214. The writ is not to correct errors of law or of fact appearing on the record since such errors are traditionally corrected by appeals and writs of error. See *id.* (citations omitted). On an application for a writ of error coram nobis the merits of the original controversy are not in issue.

A *coram nobis* petitioner must pass over "two hurdles" to obtain *coram nobis* relief, *Heimermann*, 205 Wis. 2d at 384:

First, he or she must establish that no other remedy is available. What this means for criminal defendants is that they must not be in custody because if they are, § 974.06, Stats., as an example, provides them a remedy. 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 trial court.

Id.

The determination of whether to grant a writ of *coram nobis* is a discretionary one that rests with the circuit court. *Jessen*, 95 Wis. 2d at 213. This court will not reverse such determinations unless a circuit court erroneously exercised its discretion. *See Heimermann*, 205 Wis. 2d at 386-87.

B. Singh Has Not Set Forth a Basis For *Coram Nobis* Relief.

Singh may indeed be without another remedy at law because he has long since served his sentence and passed the time to appeal the conviction he now wishes to challenge. Nonetheless, he is unable to satisfy the second requirement for *coram nobis* relief because the error he complains of, a double jeopardy violation, is not a factual error. Rather, it is ultimately a constitutional and thus legal issue. *See State v. Jacobs*, 186 Wis. 2d 219, 223, 519 N.W.2d 746, 748 (Ct. App. 1994) (citing *State v. Turley*, 128 Wis. 2d 39, 47, 381 N.W.2d 309, 313 (1986) and *State v.*

Thierfelder, 174 Wis. 2d 213, 218, 495 N.W.2d 669, 672 (1993)). Because Singh's double jeopardy claim presents a legal issue, it does not fall within the scope of coram nobis. See *State ex. Rel. Patel v. State*, 2012 WI App 117, ¶ 26, 344 Wis. 2d 405, 824 N.W.2d 862 (citation omitted);² see *Jessen*, 95 Wis. 2d at 214; see also *Kanieski*, 30 Wis. 2d 573. Singh also argues that the out of state implied consent suspension may not be used to statutorily enhance OWI penalties. (Singh Br. 4). However, Singh also concedes that the issue he raises is a constitutional one. (Singh Br. 4)(see for example, "...this is a facial attack on the constitutionality...", "...runs afoul of the Due Process Clause...", and "[The case] provides no guidance on the constitutional question...").

The State certainly does not concede any of the legal issues that Singh raises in his brief-in-chief. These issues are issues that could have been raised and corrected, if appropriate, by the traditional appellate process. Singh makes no claims and presents no record

² In *State ex rel. Patel*, the Court of Appeals explicitly rejected the defendant's invitation to expand the scope of the writ to "apply to legal errors of fundamental and constitutional dimension, particularly when there are 'serious collateral consequences.'" *State ex rel. Patel*, 344 Wis. 2d 405, ¶¶ 14-15. As the United States Supreme Court has observed, "it is difficult to conceive of a situation in a federal criminal case where [a writ of coram nobis] would be necessary or appropriate." *Carlisle v. United States*, 517 U.S. 416, 429 (1996).

showing that the legal issues he now raises (double jeopardy and the counting of suspensions towards enhanced penalties) were unknown at the time of trial and would have prevented the entry of judgment if they were known. See *Jessen*, 95 Wis 2d. at 214. It appears that ten years after Singh's conviction, he is now trying to use coram nobis to raise issues that should have been addressed in the traditional appellate process.

The circuit court may have gone a step further than it needed to when, in denying the defendant's motion, it addressed the factual issue behind Singh's double jeopardy claim: "...you were never convicted of an offense twice, nor were you ever punished twice for the same conduct." (R. 22, p. 1). However, the circuit court properly exercised its discretion in denying Singh's motion and this court should uphold that determination since no erroneous exercise of discretion has been claimed or proven.

CONCLUSION

For the above reasons, the State of Wisconsin asks this court to affirm the circuit court's denial of Aman Deep Singh's petition for a writ of error *coram nobis*.

Dated this 28th day of September, 2015.

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CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced using the following font:

Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is 8 pages.

Dated: _____.

Signed,

Attorney

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 28th day of September, 2015.

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