STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2017AP1165-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SAMMY JOSEPH HADAWAY,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND A DECISION AND ORDER DENYING A WRIT OF ERROR CORAM NOBIS ENTERED BY THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE M. JOSEPH DONALD, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

1. Did the circuit court properly exercise its discretion when it denied Defendant-Appellant Sammy Joseph Hadaway's petition for a writ of error coram nobis where: a) Hadaway did not present an error of fact crucial to his judgment of conviction; and b) granting Hadaway's petition would require the court to reach questions of perjury, in violation of the perjury prohibition that is applicable to coram nobis relief?

The circuit court answered: Yes.

This Court should answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument and publication are unnecessary because the issue presented is fully briefed and may be resolved by applying well-established legal principles to undisputed facts.

INTRODUCTION

In 1996, Sammy Hadaway pled guilty to attempted robbery as party to a crime for his involvement in the events that led to a young woman, JP, being sexually assaulted and killed. Chaunte Ott was convicted after a jury trial of killing JP. Hadaway confirmed his own involvement when he testified at Ott's trial. Ott's conviction was later overturned by this Court based upon DNA evidence. The State dismissed the charges against Ott on remand.

Over 20 years after his conviction, and over 15 years after he completed his sentence, Hadaway now wants a circuit court to vacate the judgment against him. But the circuit court properly denied Hadaway a writ of error coram

nobis because the new information he presents—DNA evidence relating to Ott's guilt—is not crucial to the ultimate judgment in his case. In other words, because Ott could theoretically be innocent of killing JP, it does not follow that Hadaway did not commit attempted armed robbery as party to a crime. And error coram nobis relief is not available to Hadaway because the basis for his petition suggests that he gave perjured testimony at Ott's trial about his own involvement. This Court should affirm the circuit court.

STATEMENT OF THE CASE

In 1995, a young woman, JP, was murdered. (R. 2:1.) Her body was found in the back of a house in Milwaukee with her throat slashed, her pants around her ankles, and her shirt partially raised. *State of Wisconsin v. Chaunte Dean Ott*, No. 2008AP34, 2008 WL 5337081, ¶ 2 (Wis. Ct. App. Dec. 23, 2008) (unpublished). LP had bruising on her ribcage and thighs, vaginal swabs revealed semen, and the autopsy report indicated possible sexual assault. *Id.*

A month after JP's murder, police received information implicating Richard Gwin in the murder. *Id.* at ¶ 3. Gwin was arrested, and he implicated both Hadaway and Chaunte Ott. *Id.* Gwin told police that he picked up JP, Hadaway, and Ott in his car and drove them to an abandoned building, where the other three got out of the car. *Id.* Hadaway and Ott returned without JP, and they told Gwin that Ott killed JP. *Id.*

The police then arrested Hadaway and Ott, at which point Hadaway corroborated Gwin's recollection of the events leading to the murder. Specifically,

> Hadaway stated that [JP], Ott and Hadaway left the car and walked to the back of the building. Hadaway stated that Ott grabbed [JP] and they began struggling, and that Ott asked Hadaway to

> hold [JP]'s hands while he robbed her, which he did. He said that when Ott found nothing in [JP]'s pockets, Ott told her she was going to give him something and pushed her down on a mattress. Hadaway said that Ott pulled down [JP]'s pants, pulled up her shirt, and tried to force his way between her legs; that Hadaway turned away and heard choking or gagging sounds, and when he looked back he saw that [JP]'s throat was cut and blood was gushing out; and that he returned to Gwin's car, and Ott followed about five or ten minutes later

Ott, 2008 WL 5337081, ¶ 4.

Hadaway was charged with attempted robbery, as party to a crime, and his co-defendant, Ott, was charged with intentional homicide. (R. 2:1.) Hadaway pled guilty and was sentenced to five years in prison. (R. 12; 18; 23.)

At Ott's trial, Hadaway testified and admitted his role in the events surrounding the homicide of JP. *Ott*, 2008 WL 5337081, ¶¶ 4, 12.

Then, in 2009, this Court reversed Ott's conviction and remanded the case for a new trial based on newly discovered DNA evidence linking another suspect, Walter Ellis, to the murder. (R. 25:1–2.); *Ott*, 2008 WL 5337081. And the State dismissed the charges against Ott. (R. 23:1.)

On March 14, 2017, Hadaway petitioned the circuit court for a writ of error coram nobis, arguing that, as Ott's co-defendant, the overturning of Ott's conviction due to DNA evidence warrants vacating Hadaway's conviction. (R. 21.) The circuit court denied the petition, finding that, since Hadaway admitted to his crimes at Ott's trial, his request to vacate his conviction now amounts to an admission of perjury, and a claim of perjury is not a basis upon which to grant a petition for a writ of error coram nobis. (R. 25:2.) The court also found that relief was unwarranted because Ott's

release does not establish Hadaway's innocence of attempted robbery as party to a crime. (R. 25:2.)

Hadaway appeals.

STANDARD OF REVIEW

Whether to grant a petition for a writ of error coram nobis is a matter of sound judicial discretion. *Ernst v. State*, 181 Wis. 155, 193 N.W. 978, 978–79 (1923). And "the decision of whether to grant a writ of coram nobis is left to the discretion of the ruling trial court." *State v. Heimermann*, 205 Wis. 2d 376, 386, 556 N.W.2d 756 (Ct. App. 1996).

ARGUMENT

The circuit court properly exercised its discretion when it denied Hadaway a writ of error coram nobis.

A. Hadaway's petition fails because he does not present an error of fact crucial to his judgment of conviction.

1. Legal Principles

A petitioner who is no longer in custody can use a writ of error coram nobis to challenge his or her conviction, but "[in] order to grant a writ of error coram nobis there must be shown 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." *State v. Schill*, 93 Wis. 2d 361, 373, 286 N.W.2d 836 (1980). "The writ of coram nobis is a discretionary writ of very limited scope that is addressed to the trial court." *State ex rel. Patel v. State*, 2012 WI App 117, ¶ 12, 344 Wis. 2d 405, 824 N.W.2d 862. "[T]he 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.* ¶ 13.

As the Seventh Circuit Court of Appeals has explained, in the context of errors coram nobis, a petitioner "must demonstrate that the judgment of conviction produces lingering civil disabilities (collateral consequences). He also must demonstrate that the error is the type of defect that would have justified relief during the term of imprisonment." *U.S. v. Keane*, 852 F.2d 199, 203 (7th Cir. 1988). Coram nobis relief is available only where there is a fundamental error and collateral consequences. *Id.*; *U.S. v. Wilkozek*, 822 F.3d 364, 368 (7th Cir. 2016). "A fundamental error that invalidates a criminal proceeding is one that undermines our confidence that the defendant is actually guilty. Only errors of this magnitude justify the cost of putting aside the interest in finality." *Wilkozek*, 822 F.3d at 368 (internal citation omitted). *See also Keane*, 852 F.2d at 206 ("At some point the judicial system must close old files and turn to the future, regretfully accepting the risk of error lest the quest for perfect justice become the enemy of adequate justice.").

2. Application of Legal Principles.

The circuit court properly denied Hadaway's petition because the new information he presents is not "crucial to the ultimate judgment" in his case. *See Patel*, 344 Wis. 2d 405, ¶ 13. Hadaway's petition for a writ of error coram nobis is essentially based on his contention that the dismissal of the charges against Ott creates a fact that would have prevented the entry of judgment against Hadaway. (R. 21.) But this mischaracterizes the new evidence. The fact that a third man's DNA was found on the victim, which called into doubt whether Ott was the murderer, does not directly affect or undermine the attempted robbery conviction against

Hadaway. This is especially true because Hadaway admitted his involvement in the incident.

At Ott's trial, Hadaway testified and admitted his role in the events surrounding the homicide of JP. *Ott*, 2008 WL 5337081, ¶¶ 4, 12. Hadaway then entered a guilty plea to the charge of attempted robbery, as a party to a crime, and again admitted his role in the events surrounding the homicide. (R. 12.) The trial court accepted Hadaway's guilty plea, and there was no factual error at the time the court accepted his plea. The reversal of Ott's conviction and ultimate release does not change that, especially since it has never been established in a court of law that Ott is innocent of the murder. (R. 25:2.)

Hadaway argues that the circuit court erred by applying the wrong standard to the new information presented in Hadaway's petition. Specifically, Hadaway claims that the circuit court imposed a "conclusive proof" standard which, he argues, is not the correct legal standard of proof for a petition for a writ of error coram nobis. (Hadaway's Br. 21.) But what the circuit court actually said was:

> The dismissal order [in Ott's case] does not establish the defendant's [Hadaway's] innocence of the attempted robbery because it does not conclusively establish Ott's innocence of the homicide or Walter Ellis's guilt; it represents only a decision by the State not to retry Ott for the homicide.

(R. 25:2.) Hadaway's characterization of the court's reasoning is misleading.

The circuit court's use of the term "conclusively establish" spoke to how Ott's release based upon DNA evidence related to *Ott's* and *Ellis's* guilt. The circuit court did not say that the new DNA evidence had to "conclusively establish" *Hadaway's* innocence. What the court was really saying is that the new DNA evidence, and the news of Ott's

conviction being overturned, do not constitute a factual error crucial to Hadaway's conviction because they are not even "conclusive" as to Ott or the third suspect, Ellis. In other words, the new information Hadaway presents does not constitute a factual error as to Hadaway or his judgment.

The issue of the appropriate burden of proof is a red herring here, and it does not need to be resolved by this Court. The circuit court did not require Hadaway to meet a heightened burden of proof in any respect to prevail upon his petition. On the contrary, the circuit court correctly held that the DNA evidence pertinent to overturning Ott's conviction had no effect on whether Hadaway is guilty of the crime of attempted robbery as party to a crime. Rather than putting an impermissible burden on Hadaway, the circuit court appropriately recognized that the DNA evidence as to Ott would have no ultimate effect on Hadaway's judgment of conviction. Thus, the circuit court required no extra proof from Hadaway, it simply concluded that his evidence would not have been dispositive.

The circuit court properly denied Hadaway's petition, finding that Ott's release did not constitute a factual error crucial to the ultimate judgment in his case.

B. Coram nobis relief is not available to Hadaway because the basis for his petition relies on his claim that he effectively gave perjured testimony at Ott's trial.

1. Legal Principles

"[T]he writ of coram nobis does not reach the question of perjury by a witness on a trial because the direct or implied finding by the jury or the court that the testimony of such witness was true is conclusive upon the hearing of the petition for the writ." *Houston v. State*, 7 Wis. 2d 348, 352, 96 N.W.2d 343 (1959); *Ernst,* 193 N.W. at 979.

2. Application of Legal Principles

Hadaway's petition for a writ of error coram nobis was properly denied because the circuit court reasonably found that Ott's release did not constitute a factual error crucial to the ultimate judgment in Hadaway's case. But Hadaway's petition was also denied because the relief he seeks is not available when the basis of a petition is premised upon, effectively, perjured testimony at Ott's trial.

Hadaway's attempted robbery conviction was based on his guilty plea.[1] (R. 12.) And, at Ott's trial, Hadaway testified to his involvement in the crimes against JP. *See Ott*, 2008 WL 5337081, ¶¶ 4, 12. Hadaway's trial testimony and admissions were judged credible by both a jury and a judge. *Id.* at ¶ 12, n4. As a result, Hadaway cannot now seek a writ of error coram nobis premised upon what amounts to a claim that he committed perjury in Ott's trial. *See Houston*, 7 Wis. 2d at 352.

The circuit court properly denied Hadaway's petition because to grant it would require the court to re-evaluate the credibility of Hadaway's confession and trial testimony, which is inappropriate in the context of coram nobis.

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[1] Since Wis. Stat. § 971.08(1)(b) requires a factual basis to support a guilty plea, we can assume that the trial judge felt there was such a basis supporting Hadaway's plea. And Hadaway never challenged his plea in this regard.

CONCLUSION

This Court should affirm the judgment of conviction and the circuit court's decision and order denying a petition for a writ of error coram nobis.

Dated this 30th day of January, 2018.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,174 words.

Dated this 30th day of January, 2018.

_____
ABIGAIL C. S. POTTS
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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. § 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 30th day of January, 2018.

_____
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