

**FILED****MAR 14 2022****CLERK OF SUPREME COURT  
OF WISCONSIN**

STATE OF WISCONSIN

SUPREME COURT

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STATE OF WISCONSIN,

Petitioner-Respondent,

v.

Court of Appeals Case No. 2019AP000430

L.C. Case No. 2004JV7A

S. C. M.

Defendant-Appellant,

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ON NOTICE OF APPEAL FROM AN ORDER DENYING MOTION FOR

WRIT OF ERROR CORAM NOBIS ORDERED AND ENTERED IN

TREMPEALEAU COUNTY CIRCUIT COURT THE HONORABLE JUDGE

RIAN RADTKE PRESIDING

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**PETITION FOR REVIEW**

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STATE OF WISCONSIN  
SUPREME COURT

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Court of Appeals Case No. 2019AP430

L.C. Case No. 2004JV7A

S.C.M.

Defendant-Appellant,

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ON NOTICE OF APPEAL FROM AN ORDER DENYING MOTION FOR WRIT OF ERROR

CORAM NOBIS ORDERED AND ENTERED IN TREMPLEAU COUNTY CIRCUIT

COURT THE HONORABLE JUDGE RIAN RADTKE PRESIDING

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**PETITION FOR REVIEW**

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**STATEMENT OF THE CASE**

Juvenile petition filed on November 14, 2006. Plea hearing held on February 5, 2007. Disposition hearing held on March 15, 2007. Writ of Error Coram Nobis filed on October 12, 2018.

**STATEMENT OF THE FACTS**

After fully briefing the Court of Appeals it was decided that I'm not entitled to a Writ of Error Coram Nobis. Even though this is the only remedy available to me.

In an effort to fully exhaust state remedies I'm now filing this Petition for Review.

**ARGUMENT**

**Issue Number #1- Doctor-Patient Privilege**

During the course of court ordered sex offender treatment the therapist insisted that I must admit to any other crimes I committed in order to complete treatment and be eligible for

release. At her request, I completed detailed written statements. When I turned them in she informed of her duty to report, then released the statements to law enforcement. (See Exhibit A, one page.)

Wis. Stat. §905.04, 2006, states: ‘a patient has the privilege to prevent the disclosure of confidential communications made for purposes of treatment’. Wis. Stat. §905.04(1)(b), 2006, states: ‘a communication is confidential if not intended to be disclosed to 3<sup>rd</sup> persons’.

In *State V. Todd M.*, 178 Wis.2d 877, 506 N.W.2d 427, the Court of Appeals decided that Wis. Stat. §905.04(1)(e) did not apply to except the privilege because defendant was the abuser and not the person abused. The statements were made as part of his therapy and at the urging of his therapist and were privileged communications.

The statements I made were at the direction of the therapist during court ordered sex offender treatment. I did not believe I had an option to prevent disclose nor was I aware of doctor-patient privilege. I believed I had to complete treatment in order to be released. I thought writing the statements was part of the treatment process.

### **Issue #2- Defective Petition**

According to Wis. Stats. §938.255(d), 2006, when a juvenile is charged with violating criminal law the petition must cite the appropriate law. The petition filed in the instant matter cited §948.02(1) as the appropriate law. (See Exhibit B, two pages).

Upon review, 2005 Wis.Act 430 substantially changed §948.02 by creating separate subsections. See *State v Tisland*, 2015 WI App 20, 360 Wis.2d 489, 864 N.W.2d 120.

In *State v LaGrew*, 2011 WI App 114, 336 Wis.2d 475, 80 N. W. 2d 348, the Court of Appeals discussed the changes made to §948.02 statute: “Before its revision , Wis. Stats.

§948.02(1) (2003-04) read in its entirety: Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 year is guilty of a Class B felony. As affected by Act 430 §948.02(1) created separate subsecs. (1)(a) through (1)(e).”

Also in State v LaGrew, 2011 WI App 114, 336 Wis.2d 475, 80 N. W. 2d 348, the Court of Appeals noted: “2005 Wis.Act 430 was enacted on May 22, 2006 and took effect on June 6, 2006.”

This means the changes made by 2005 Wis.Act 430 took effect on 6/6/2006 and the petition was filed on 11/14/2006, more than five months later. Yet the petition did not specify which subsection I was charged with violating.

The petition did not identify which specific subsection was charged. Therefore, the petition was defective.

### **Issue #3- Dispositional Order**

At the dispositional hearing held on 3/15/07 the court invoked the provisions set forth under Wis. Stat. §938.33(3r), 2007, Serious Juvenile Offender Program. The dispositional order clearly states that the effective date of the order was the same day as the date the hearing was held (See Exhibit C, three pages). Due to a previous disposition, issued on 12/21/2004, I had already been placed in Lincoln Hills School for Boys, a Type 1 juvenile correctional institution, under the Serious Juvenile Offender Program, since 12/22/2004. (See Exhibit D, three pages).

Wis. Stat. §938.533(3)(a)(1), 2007, clearly indicates that a juvenile is not allowed to be placed in a Type 1 juvenile correctional institution for more than 3 years, approximately 1095 days.

Since the court ordered a Serious Juvenile Offender Program disposition on 12/21/2004, then ordered a second Serious Juvenile Offender Program on 3/15/2007 (while I was still subject

to the first) I was enjoined an additional 715 days of placement beyond the limits allowed by the statutes.

### CONCLUSION

The Writ of Error Coram Nobis is an available remedy in this case. It is a common law remedy and not repealed by the enactment of Wis. Stat. §974.06. It allows this court to correct an error of fact not appearing on the record. I was not treated within conformity of the law. The petition was defective, I was unaware of my right to doctor- patient privilege and the court lacked competency to issue a second Serious Juvenile Offender Program disposition the same day as the hearing, which overlapped the first Serious Juvenile Offender Program placement.

“A person seeking the writ must pass over two hurdles. First, he must establish that no other remedy is available. Second, the factual error that he 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 to “passed on” by the trial court.” State v. Heimermann, 205 Wis.2d 376, HN5,556 N.W.2d 756

In regards to the instant matter, the first hurdle is overcome by lack of custody and no other available remedy.

A direct appeal requires the notice of intent to be filed within 20 days of final adjudication. No notice of intent was filed.

Wis. Stat. §974.06 requires that the petitioner be “in custody under the sentence of the court”. See State v. Theoharopoulos, 72 Wis.2d 327, 329, 240 N.W.2d 635 (1976) and Wis. Stat. §974.06. I discharged from custody on 3/15/2012, which means that the §974.06 remedy is not available.

State Habeas Corpus, operated under Section 782 Statutes, is also unavailable to me since I've discharged from custody. "Since it is an extraordinary writ, habeas corpus relief is available only where the petitioner demonstrates: 1) restraint of his liberty, 2) that restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction and 3) no other adequate remedy is available at law." *State ex rel. Haas v McReynolds*, 2002 WI 43, ¶12, 252 Wis.2d 133, 643 N.W.2d 771.

The Federal Habeas Corpus, allowed by 28 U.S.C.S. §2254, is also unavailable because it has a custody requirement as well. Additionally, Federal Habeas Corpus requires "exhaustion of all state remedies".

The second hurdle is overcome because these issues have never been brought to the attention of this court until now.

In closing, I don't believe the court would have found that I knowingly, intelligently and voluntarily accepted the plea deal if the doctor-patient privilege and defective petition issue had been brought to the court's attention at the time of the dispositional hearing.

Additionally, if the court had been aware that Wis. Stat. §938.538(3)(a)(1) did not allow a juvenile to be held in a Type 1 juvenile correctional institution for more than 3 years, the court most likely would not have issued the second Serious Juvenile Offender Program disposition.

Furthermore, the Wisconsin Constitution guarantees a remedy in Article 1, Section 9. It reads: Remedy for Wrongs. Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property or character; he ought to obtain justice freely, and without being obliged to pay for it, completely and without denial; promptly and without delay, conformably to the laws.

This writ is the only remedy available to me.



**THEREFORE**, I pray this court to remand this case to the circuit court and order the issuance of a Writ of Error *Coram Nobis* review or invoke Wis. Stat. § 752.35 and reverse the adjudication and vacate the disposition in the interest of justice.

Dated this 10<sup>th</sup> day of March, 2022.

*S. C. M.*

Defendant- Appellant, *Pro Se*

**CERTIFICATION AS TO BRIEF LENGTH**

I hereby certify that this brief and appendix conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with proportional font. The length of this brief is 7 pages with 1,512 words.

Dated this 10<sup>th</sup> day of March, 2022.

*S.C.M.*

Defendant- Appellant, *Pro Se*

**CERTIFICATION OF MAILING**

I certify that this brief and appendix was deposited in the United States mail for delivery to the Clerk of the Supreme Court, and the District Attorney's Office of Trempealeau County, by first-class mail, or other classes of mail that is at least as expeditious, on the 10<sup>th</sup> day of March, 2022. I further certify that this Petition for Review was correctly addressed and postage pre-paid.

Dated this 10<sup>th</sup> day of March, 2022.

*S.C.M.*

Defendant- Appellant, *Pro Se*