

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 11, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2007AP50
STATE OF WISCONSIN**

Cir. Ct. No. 2000CM1237

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AARON K. SCHUELKE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
MICHAEL W. GAGE, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Aaron Schuelke appeals an order denying his petition for a writ of coram nobis.² Schuelke argues that because the statement he

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² A common law remedy used to correct an error of fact.

made to his probation officer would not have been admissible in court, he is entitled to have his conviction vacated. Because we conclude that the inadmissibility of Schuelke's statement was an error of law and not an error of fact unknown to the trial court as required for a writ of coram nobis, we affirm the denial of Schuelke's petition.

BACKGROUND

¶2 On July 13, 2000, the State charged Schuelke with three counts of engaging in sexual intercourse with a child aged sixteen or older. The criminal complaint stated that Schuelke admitted the crime to his probation agent, Nicole Hall, who then contacted Appleton police sergeant Mike Nofzinger.

¶3 Schuelke subsequently pled no contest to a single count of sexual assault of a child aged sixteen or older. At the time of his plea, Schuelke's probation had been revoked and he was serving a fifteen-year sentence on a separate matter. Schuelke received a nine-month sentence for the sexual assault, concurrent to the fifteen-year prison sentence he was then serving.

¶4 On March 20, 2006, Schuelke filed a motion for a writ of coram nobis. The trial court noted that a writ of coram nobis is a remedy available when all other avenues of relief are closed and which can be used only to correct an error of fact. The trial court concluded that because Schuelke's sentence was complete, he was ineligible for relief under WIS. STAT. § 974.06 and therefore had no other available remedy. However, the trial court further concluded that Schuelke failed to demonstrate that there was "an error of fact unknown at the time of the disposition ... of such a nature that knowledge of its existence at the time would have prevented the entry of judgment."

DISCUSSION

¶5 The writ of coram nobis is a common law remedy. *Jessen v. State*, 95 Wis. 2d 207, 212, 213-14, 290 N.W.2d 685 (1980). A person seeking a writ of coram nobis must meet a two-part test. *State v. Heimermann*, 205 Wis. 2d 376, 384, 556 N.W.2d 756 (Ct. App. 1996). First, the person must establish no other remedy is available. *Id.* Next, the person must 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. Schuelke argues the statement he made to his probation officer was inadmissible and his attorney was ineffective for failing to pursue suppression. Schuelke’s efforts fail because the writ of coram nobis is not available to correct errors of law. *Id.*

¶6 The State concedes no other remedy is available to Schuelke and he has therefore met the first prong of the test. However, Schuelke cannot meet the second prong. Schuelke does not argue that the statement he made to his probation officer was inaccurate or that the trial court relied on any incorrect facts. Rather, Schuelke argues that his attorney was ineffective for failing to pursue suppression of the statement. The determination of whether an attorney’s performance satisfies the constitutional standard for ineffective assistance of counsel is a question of law. *State v. Thiel*, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305. Thus, there was no error of fact.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

