COURT OF APPEALS
DECISION
DATED AND FILED

April 27, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal Nos. 2009AP612
2009AP613
2009AP614
2009AP615
2009AP616

Cir. Ct. Nos. 1987CF7578
1988CF881950
1989CF890540
1993CF931569
1997CF970432

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIE FLOYD DYSON, JR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. In these consolidated appeals, Willie Floyd Dyson, Jr., *pro se*, appeals from an order denying a petition for a writ of *coram nobis*. The circuit court denied Dyson's petition. We affirm.

¶2 Between 1988 and 1997, Dyson was convicted of various crimes in the five underlying matters. It is undisputed that Dyson is no longer serving a sentence arising from any of the cases. Rather, from Dyson's appellate brief, it appears that he is incarcerated in a federal prison, and his federal sentence was enhanced because of these state convictions.[1]

¶3 In his petition for a writ of *coram nobis*, filed with the circuit court, Dyson argued that his Wisconsin sentences should be overturned as violative of ***Blakely v. Washington***, 542 U.S. 296, 303-04 (2004) and ***Apprendi v. New Jersey***, 530 U.S. 466, 490 (2000) (any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt); that his Fifth and Sixth Amendment rights were violated because the trial judge in one of the matters was "gross[ly] incompeten[t]" and intoxicated; that his ***Miranda*** rights were violated during a 1992 police questioning; and that his Due Process rights have been violated because he has not been appointed an attorney to "mount [] a substantial Constitutional challenge" to his convictions. The circuit court denied Dyson's petition as outside the scope of a writ of *coram nobis*.

[1] Although the State correctly notes that nothing in the record supports Dyson's description of his current incarceration status, it does not dispute it.

¶4 On appeal, Dyson argues only that the trial judge in one of the underlying cases, 1988CF1950, a burglary conviction, was "under the influence of alcohol while judging" and, therefore, his conviction should be reversed. Dyson further argues that the other convictions should be reversed because "all of the courts subsequent[ly] … relied on … [his] past criminal convictions in imposing a sentence." Because Dyson does not raise on appeal the other arguments raised in the circuit court, we deem them abandoned. *See* ***State ex rel. Peckham v. Krenke***, 229 Wis. 2d 778, 782 n.3, 601 N.W.2d 287 (Ct. App. 1999), *overruled on other grounds by* ***State v. Popenhagen***, 2008 WI 55, 309 Wis. 2d 601, 749 N.W.2d 611. We now consider whether Dyson is entitled to any relief through a writ of *coram nobis*.

¶5 "The writ of *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). A person seeking the writ must meet two tests. First, "he or she must establish that no other remedy is available" and, 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.*** at 384. Because the time for appealing his convictions has long since passed and because Dyson is no longer serving a sentence in any of the cases, Dyson satisfies the first test. *See* ***id.*** at 385 (writ of *coram nobis* available to a petitioner no longer in custody under a sentence of the court).

¶6 Dyson, however, does not satisfy the second test. Turning to Dyson's claim based on the alleged intoxication of the trial judge in 1988CF1950,

we first note that there is not one scintilla of evidence in the appellate records to support Dyson's assertion that the trial judge was intoxicated while on the bench. Equally important, any such claim is not cognizable in a writ of *coram nobis* because it constitutes a legal challenge to the validity of the conviction—the claim is not a factual error. Therefore, Dyson is not entitled to any relief through a writ of *coram nobis.*

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).