

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LLOYD T. SCHUENKE,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

ORDER

03-C-625-C

Petitioner Lloyd T. Schuenke has filed a proposed complaint. He requests leave to proceed in forma pauperis. Because it appears from petitioner's return address that he is no longer a prisoner, he is not barred under 28 U.S.C. § 1915(g) from requesting pauper status despite the fact that he has filed three cases that were dismissed as legally frivolous. From the affidavit of indigency petitioner has submitted with his complaint, I find that he qualifies for indigent status. However, his case must be dismissed immediately on the court's own motion, because the court lacks jurisdiction to grant him the relief he seeks.

Petitioner titles his action a petition for a writ of "corum nobis." In it, he seeks an order vacating two state court criminal convictions he received on August 1, 1991, for third

degree sexual assault. Petitioner alleges that he has served out the sentences he received on the convictions and has been unsuccessful in having the convictions overturned through a writ of habeas corpus.

Because petitioner is not currently in custody for the convictions he challenges, the relief he requests may be granted only on a writ of error coram nobis. See United States v. Bush, 888 F.2d 1145, 1149 (7th Cir. 1989) (citing United States v. Morgan, 346 U.S. 502, 512 (1954)).

Although Fed. R. Civ. P. 60(b) abolished writs of coram nobis in civil cases, “[i]n criminal cases, the writ of coram nobis [] remains available whenever resort to a more usual remedy would be inappropriate.” James v. United States, 459 U.S. 1044, 1046 (1982). The All Writs Act, 28 U.S.C. § 1651, authorizes courts to issue writs of error coram nobis. See Bush, 888 F.2d at 1146 (citing Morgan, 346 U.S. at 512). The writ of error coram nobis is an extraordinary remedy available only to challenge errors of the most fundamental character. Morgan, 346 U.S. at 512. To obtain a writ of error coram nobis, plaintiff must demonstrate that the error he asserts could not have been raised on direct appeal, that the challenged conviction has caused him ongoing civil disabilities and that the error would have been sufficient to justify habeas corpus relief if challenged under 28 U.S.C. § 2255. United States v. Doe, 867 F.2d 986, 988 (7th Cir. 1989). Plaintiff does not do any of these things in his petition, but that does not matter in this instance.

Unfortunately for petitioner, coram nobis is not available to attack a state conviction in federal court. See Lowery v. McCaughtry, 954 F.2d 422 (7th Cir. 1992) (citing Sinclair v. State of Louisiana, 679 F.2d 513, 514 (5th Cir. 1982)). “A writ of error coram nobis can only issue to aid the jurisdiction of the court in which the conviction was had.” Sinclair, 679 F.2d at 514 (citing Madigan v. Wells, 224 F.2d 577 (9th Cir. 1955) and Booker v. State of Arkansas, 380 F.2d 240 (8th Cir. 1967)). Therefore, this court lacks the power to give petitioner the relief he requests.

ORDER

IT IS ORDERED that petitioner’s request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED on the court’s own motion for lack of jurisdiction.

Entered this 14th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge