

Cite as 2011 Ark. 211

SUPREME COURT OF ARKANSAS

No. CR 09-577

RICO BENTON
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** May 12, 2011APPEAL FROM THE HEMPSTEAD
COUNTY CIRCUIT COURT, CR
94-108, HON. DUNCAN
CULPEPPER, JUDGE

AFFIRMED.

PER CURIAM

In 1995, appellant Rico Benton entered a plea of guilty to capital murder and was sentenced to life imprisonment without parole. In 2005, he filed in the trial court a pro se petition for writ of error coram nobis. The court denied the petition, and appellant brings this appeal. We find no abuse of discretion in the denial of the petition and affirm.

The standard of review of a denial of a petition for writ of error coram nobis is whether the circuit court abused its discretion in denying the writ. *Pierce v. State*, 2009 Ark. 606 (per curiam). An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly. *Id.* A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam). This exceedingly narrow remedy is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Clark v. State*, 358 Ark. 469, 192 S.W.3d 248 (2004).

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This court has previously recognized that a writ of error coram nobis was available to address errors found in four categories: insanity at the time of trial; a coerced guilty plea; material evidence withheld by the prosecutor; a third-party confession to the crime during the time between conviction and appeal. *Rayford v. State*, 2011 Ark. 86 (per curiam); *Webb v. State*, 2009 Ark. 550 (per curiam).

Appellant alleged in his petition for writ of error coram nobis that his plea of guilty was obtained by coercion on the part of his attorney. The coercion consisted of counsel's advising appellant and appellant's mother that the prosecution could, and would, seek the death penalty if appellant did not enter a plea of guilty. He contended that counsel should have investigated further and found witnesses who could have given counsel a clear understanding of the facts, and that those facts would have revealed that appellant was guilty of no more than attempted robbery. He argued that counsel used fear and deception to induce appellant to sign a fabricated statement that was not accurate. He further asserted specifically that he was not afforded the effective assistance of counsel guaranteed by the state and federal constitutions.

While appellant couched his primary grounds for a writ of error coram nobis in terms of a coerced guilty plea, it is evident from a reading of those grounds that he was in fact contending throughout the petition that he was denied effective assistance of counsel. Appellant did not contend that he was subjected to specific mistreatment on the part of any person. Mere fear of a more severe penalty if the defendant opts to go to trial is not in itself coercion. *See Pierce*, 2009 Ark. 606.

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A claim of ineffective assistance of counsel alone is not grounds for the writ. Such claims are properly brought pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). Ark. R. Crim. P. 37.1(a); *Crosby v. State*, 2009 Ark. 555 (per curiam); see also *Buckhanna v. State*, 2009 Ark. 490, at 2 (citing *Jackson v. State*, 352 Ark. 359, 105 S.W.3d 352 (2003) (citing *Strickland v. Washington*, 466 U.S. 668 (1984))). Ineffective assistance claims are outside the purview of a coram nobis proceeding, and a petition for writ of error coram nobis is not a substitute for proceeding under Rule 37.1. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

It must also be noted that even if appellant had advanced a cognizable claim, his petition was subject to denial because of the delay in bringing the claims. While there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief. *Harris v. State*, 2010 Ark. 489 (per curiam) (citing *Martin v. State*, 2010 Ark. 164). Clearly, appellant was well aware for the ten years between the time he entered his plea and when he filed his petition of the circumstances surrounding his decision to enter a plea of guilty. In the absence of a valid excuse for delay, a coram nobis petition is subject to denial. *Scott v. State*, 2010 Ark. 363 (per curiam) (citing *Echols v. State*, 354 Ark. 530, 127 S.W.3d 486 (2003)). Appellant fell far short of demonstrating diligence, and the trial court could have denied relief on that basis alone.

Affirmed.