

Cite as 2009 Ark. 463

ARKANSAS SUPREME COURT

No. CR 95-428

JON MILLS a/k/a JOHN MILLS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered October 1, 2009

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS [CIRCUIT
COURT OF SALINE COUNTY, CR 94-
378]

PETITION DENIED.

PER CURIAM

In 1995, petitioner Jon Mills, who is also known as John Mills, was found guilty by a jury of rape and sexual abuse, and sentenced to an aggregate term of life imprisonment. We affirmed. *Mills v. State*, 321 Ark. 621, 906 S.W.2d 674 (1995).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.¹ The petition to reinvest jurisdiction in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis, an extraordinary remedy that is rarely granted, is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental

¹For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

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nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). These errors are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.*

After a conviction has been affirmed, the writ is appropriate to secure relief from a judgment when a petitioner can demonstrate that a fundamental error of fact existed that was not addressed, or could not have been addressed, at trial because it was extrinsic to the record and somehow hidden or unknown to the petitioner. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004); *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). Moreover, a petitioner must show that had the fact been known to the trial court, it would have prevented rendition of the judgment, and that it was not brought forward before rendition of judgment through no negligence or fault of the petitioner. *Cloird v. State, supra; State v. Larimore, supra.*

Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984). The court is not required to accept the allegations contained in a petition at face value. *Cloird v. State, supra.* “The mere naked allegation that a constitutional right has been invaded will not suffice. The application should make a full disclosure of specific facts relied upon and not merely state conclusions as to the nature of such facts.” *Cloird v. State*, 357 Ark. at 450, 182 S.W.3d at 479 (quoting *State v. Larimore*, 341 Ark. at 407, 17 S.W.3d at 93).

As grounds for coram nobis relief, petitioner first contends that the prosecutor withheld material exculpatory evidence, that is, “all physical evidence” collected by the police. This

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argument, however, is merely conclusory. Petitioner fails to establish that any evidence was collected by the police that was not introduced at trial or disclosed to the defense. He complains also that “no scientific” evidence supported the charges against him, but does not demonstrate that any tests were conducted in relation to the case that were not disclosed to the defense or would have been exculpatory.

A petitioner’s allegations need not be accepted at face value. *Cloird v. State, supra*. Because petitioner here fails to state specific facts in support of his allegation, and relies only upon conclusions, he fails to demonstrate a basis for coram nobis relief. Moreover, petitioner asks in the petition that an evidentiary hearing be conducted in order to investigate whether his allegations have merit, further confirming that these claims are conclusory and not supported by fact.

To the extent that petitioner actually contends here that insufficient evidence supported his conviction,² that argument should have been raised at trial and in the direct appeal. *See Sanford v. State*, 342 Ark. 22, 25 S.W.3d 414 (2000). Coram nobis relief cannot be used as a substitute for raising such issues. *See Williams v. Langston*, 285 Ark. 444, 688 S.W.2d 285 (1985) (per curiam).

Petitioner next contends that the trial court lacked jurisdiction over the case. When the issue is whether the trial court acted in excess of its authority, it becomes a question of subject-matter jurisdiction. *State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005). A trial court’s loss of jurisdiction over a defendant is always open, cannot be waived, and can be questioned for the first

²In the petition to reinvest jurisdiction in the trial court, and in the petition for writ of error coram nobis that petitioner intends to file in the trial court, petitioner contends that the prosecutor failed to prove the essential elements of the crimes for which he was convicted. Petitioner also contends that the prosecutor at that time was involved in a conspiracy with law enforcement and the judge to exact retribution against petitioner involving a murder. Conspiracy is not one of the four grounds listed upon which a petitioner may be granted coram nobis relief. *Pitts v. State, supra*.

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time on appeal. *Id.* Here, however, petitioner fails to demonstrate that the trial court lacked jurisdiction over his criminal case.

He first contends that the matter may have been brought in the wrong county, but provides no support for this conclusion. Petitioner also relies upon Amendment 80 to the Arkansas Constitution, wherein Chancery Courts and Circuit Courts were merged. He posits that Amendment 80 created a conflict between district court and circuit courts over jurisdiction of criminal cases, and specifically argues that “Circuit/Chancery/District Judge[s] ha[ve] only county-wide jurisdiction. This type of judgeship has no jurisdiction to impose a sentence to a State Prison[er]. Therefore, Saline County must be sued by ADC and State be placed at odds of be[ing] used over this mess.” Dependence upon Amendment 80 offers no relief. Amendment 80 became effective in 2001, which was several years after petitioner’s trial. Petitioner thus fails to demonstrate that the trial court lacked jurisdiction over his criminal case.

Petitioner also contends that he was subjected to double jeopardy, suffered various other constitutional violations, and was not given a formal first appearance. The remaining allegations do not fall within the four categories in which coram nobis relief is available. *Pitts v. State, supra*. As a result, the claims do not constitute grounds upon which the writ could issue.

Even if petitioner were able to demonstrate a fundamental error of constitutional proportions, a coram nobis petition is not the proper forum in which to raise such allegations. Error coram nobis proceedings are not interchangeable with proceedings under Arkansas Rule of Criminal Procedure 37.1. *Williams v. State*, 289 Ark. 385, 711 S.W.2d 479 (1986) (per curiam). Petitioner also alludes to ineffective assistance of counsel, but that argument must also be brought in a Rule 37.1 petition.

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McArty v. State, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird v. State, supra*. Here, appellant has failed to make a showing that the allegations contained in his petition were meritorious or were grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis.

In addition, due diligence is required in making application for relief. In the absence of a valid excuse for delay, the petition will be denied. *State v. Larimore, supra*. Petitioner here has shown no excuse for his delay of fourteen years in proceeding for the writ. As petitioner failed to exercise due diligence, the petition is additionally denied on that basis.

Petition denied.