

Cite as 2011 Ark. 165

SUPREME COURT OF ARKANSAS

No. CACR 07-446

BRAD E. CRAWFORD
Petitioner

v.

STATE OF ARKANSAS
Respondent**Opinion Delivered** April 14, 2011PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT, CR
2005-233]

PETITION DENIED.

PER CURIAM

In 2006, petitioner Brad E. Crawford was found guilty by a jury of murder in the first degree and sentenced to 708 months' imprisonment. In the same proceeding, the trial court revoked the suspended sentences from prior convictions entered in 2000. One appeal was taken from both the revocation order and the judgment of conviction, and the Arkansas Court of Appeals affirmed. *Crawford v. State*, CACR 07-446 (Ark. App. Dec. 5, 2007) (unpublished).

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 in the case.¹ A petition for leave to

¹For clerical purposes, the petition was assigned the docket number for the direct appeal of the judgment of conviction, CACR 07-446.

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proceed 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. *Cox v. State*, 2011 Ark. 96 (per curiam); *Fudge v. State*, 2010 Ark. 426; *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam) (citing *Newman v. State*, 2009 Ark. 539, ___ S.W.3d ___); see also *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Fudge*, 2010 Ark. 426; *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that 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. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. The function of the writ is to secure relief from a judgment rendered while there existed some fact that would have prevented its rendition if it had been known to the circuit court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Grant*, 2010 Ark. 286, ___ S.W.3d ___ (citing *Newman*, 2009 Ark. 539, ___ S.W.3d ___); see also *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam); *Cloird v. State*, 357 Ark. 446, 182

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S.W.3d 477 (2004). The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Webb v. State*, 2009 Ark. 550 (per curiam); *Sanders*, 374 Ark. 70, 285 S.W.3d 630 (2008). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Gardner v. State*, 2011 Ark. 27 (per curiam); *Barker*, 2010 Ark. 354, ___ S.W.3d ___; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005); *Venn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

As grounds for issuance of the writ, petitioner contends that he is innocent of the murder of which he was convicted and that the judgment against him was obtained by virtue of prosecutorial misconduct. The misconduct is alleged to have occurred when the prosecutor in closing argument made improper and highly prejudicial remarks that petitioner contends stripped him of the presumption of innocence and denied him a fair trial.

It appears that petitioner has misunderstood the scope of an error coram nobis proceeding. The prosecutor's closing argument was a part of the trial. It was not extrinsic to the record in some manner, and clearly the prosecutor's remarks were subject to objection by the defense at the moment the remarks were made to the jury. As stated, to warrant a writ of error coram nobis, a petitioner has the burden of bringing forth some fact that was not known at the time of trial. *Cox v. State*, 2011 Ark. 96 (per curiam) (citing *Webb v. State*, 2009 Ark. 550). Petitioner here has not met that burden.

Petition denied.