

SUPREME COURT OF ARKANSAS

No. CR 10-951

ESAU ELIFAS ESTRADA
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

Opinion Delivered November 10, 2011

APPEAL FROM AN ORDER OF THE
WHITE COUNTY CIRCUIT COURT,
CR 2006-515, HON. ROBERT
EDWARDS, JUDGE

AFFIRMED.

PER CURIAM

Appellant Esau Elifas Estrada appeals from an order of the White County Circuit Court denying his petition for writ of error coram nobis. On appeal, appellant argues that it was error for the circuit court to deny his petition because an error coram nobis proceeding should be allowed (1) where there is a claim of ineffective assistance of counsel based on an attorney's failure to advise his client of the risk of deportation resulting from a guilty plea, (2) because the ninety-day time limit for bringing such a claim in the context of a proceeding under Arkansas Rule of Criminal Procedure 37.1 (2006) is insufficient, (3) because it is the only way to achieve justice, and (4) because to do so would only be a limited extension of relief that would not result in greater liability for attorneys. Additionally, appellant states that he remains on probation and that the issue of whether he is entitled to coram-nobis relief is therefore not moot. We find no error and affirm.

The record reflects that on December 5, 2006, appellant, who is a legal, permanent

resident of the United States, pled guilty to one count of maintaining a drug premise in violation of Arkansas Code Annotated section 5-64-402 (Supp. 2009). As a result, the circuit court sentenced appellant to a term of sixty months' probation. No direct appeal or postconviction proceeding followed.

On May 13, 2010, appellant was picked up by Immigration Customs and Enforcement officers and placed in a removal proceeding in the Oakdale, Louisiana, Immigration Court. Thereafter, appellant filed the instant petition, asserting that his trial counsel never informed him of the possible adverse immigration consequences that could result if he pled guilty to the charge. Specifically, he stated that the charge of maintaining a drug premise constitutes an aggravated felony under the Immigration and Nationality Act section 237(a)(2)(A)(iii), codified at 8 USC section 1227, and his guilty plea to that charge makes him removable. Appellant asserted that he was entitled to coram-nobis relief, even though this court had not previously granted such relief on a claim of ineffective assistance of counsel, because the United States Supreme Court in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), held that counsel is required to inform a client as to whether a plea carries a risk of deportation. Appellant asserted that because of the holding in *Padilla*, coram-nobis proceedings should be expanded to allow for a claim of ineffective assistance of counsel. Additionally, appellant argued that he was coerced by his counsel into pleading guilty by counsel's failure to advise him of the possible deportation consequences.

Following an expedited hearing on June 8, 2010, the circuit court entered an order denying appellant's petition. Therein, the circuit court found that appellant's claim of ineffective

assistance of counsel could have been raised in a Rule 37.1 petition and did not provide a basis for coram-nobis relief. This appeal followed.

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. *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *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).

As grounds for issuance of the writ, appellant asserts that his trial counsel did not advise him of the possibility that he could be deported if he pled guilty to the charge of maintaining a drug premise and that counsel's failure to do so constituted ineffective assistance that should be addressed through the issuance of a writ of error coram nobis. Although appellant acknowledges that such relief has not been available on a claim of ineffective assistance of counsel, he asserts that it should be available in a case such as his where he was not advised of possible deportation consequences. In so arguing, appellant relies on the Supreme Court's decision in *Padilla*, arguing that his counsel's deficient performance prejudiced him because it deprived him of his right to a fair trial and also limited his options under the Immigration Nationality Act (INA).

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. *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam). 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; *Id.*; see also *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam). 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. 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).

Appellant is correct that this court has held that claims of ineffective assistance of counsel are not cognizable in a coram-nobis proceeding. *Benton v. State*, 2011 Ark. 211 (per curiam); *Pierce*, 2009 Ark. 606 (citing *Mills v. State*, 2009 Ark. 463 (per curiam)). Such claims are properly brought pursuant to Arkansas Rule of Criminal Procedure 37.1. *Crosby v. State*, 2009 Ark. 555 (per curiam); see also *Buckhanna v. State*, 2009 Ark. 490. 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).

Appellant has in no way met his burden of demonstrating why this court should overrule its prior case law to expand the categories of error that may be addressed in a coram-nobis proceeding. *See, e.g., Thomas v. State*, 370 Ark. 70, 257 S.W.3d 92 (2007) (holding that this court does not lightly overrule cases and applies a strong presumption in favor of the validity of prior decisions).

Affirmed.