

Cite as 2011 Ark. 247

SUPREME COURT OF ARKANSAS

No. CR 90-163

LEONARD DICKERSON
Petitioner

v.

STATE OF ARKANSAS
Respondent**Opinion Delivered** June 2, 2011PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [PULASKI COUNTY
CIRCUIT COURT, CR 89-1660]

PETITION DENIED.

PER CURIAM

In 1990, petitioner Leonard Dickerson was found guilty of rape and sentenced as a habitual offender to 40 years' imprisonment. We affirmed. *Dickerson v. State*, CR 90-163 (Ark. Jan. 28, 1991) (unpublished).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 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,

¹For clerical purposes, the petition was assigned the docket number for the direct appeal of the judgment of conviction, CR 90-163.

Cite as 2011 Ark. 247

___ 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 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. 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.

Cite as 2011 Ark. 247

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 the evidence was insufficient to sustain the judgment and that he was not afforded effective assistance of counsel. Neither assertion is grounds for a writ of error coram nobis.

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). A claim that the evidence was insufficient to warrant a finding of guilt is a direct attack on the judgment that is properly made at trial and on the record on appeal. Whether the evidence was sufficient to sustain a judgment is not an issue cognizable in an error coram nobis proceeding. *Cooper v. State*, 2010 Ark. 471 (per curiam); *Flanagan v. State*, 2010 Ark. 140 (per curiam). Likewise, issues of mere trial error are not grounds for the writ. *Flanagan*, 2010 Ark. 140.

With respect to petitioner's allegations of ineffective assistance of counsel, such assertions are also outside the purview of a coram nobis proceeding. *Benton v. State*, 2011 Ark. 211 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam) (citing *Mills v. State*, 2009 Ark. 463 (per curiam)). Such allegations should have been raised in a timely postconviction proceeding pursuant to Arkansas Rule of Criminal Procedure 36.4 (1990), and a petition for writ of error coram nobis is not a substitute for proceeding for postconviction relief in a timely

Cite as 2011 Ark. 247

petition or an opportunity to raise new allegations that could have been raised under the rule.

Benton, 2011 Ark. 211.

Finally, in its response to the petition, the State asserts that the petition was untimely because petitioner did not demonstrate due diligence. Although 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); *Martin v. State*, 2010 Ark. 164 (2010). Because petitioner does not present a claim that supports a meritorious attack on the judgment, we need not consider whether the petition was brought in a diligent manner. *Harris*, 2010 Ark. 489.

Petition denied.