

SUPREME COURT OF ARKANSAS

No. CR-12-423

MICHAEL BALL

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered September 17, 2015

PRO SE PETITION AND
SUPPLEMENTAL PETITION TO
REINVEST JURISDICTION IN THE
TRIAL COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS
[WASHINGTON COUNTY CIRCUIT
COURT, NOS. 72CR-10-1933, 72CR-11-
57]

PETITION AND SUPPLEMENTAL
PETITION DENIED.

PER CURIAM

In 2012, judgment was entered in the Washington County Circuit Court reflecting that petitioner Michael Ball had been found guilty by a jury of two counts of rape arising from the sexual assault of his stepdaughter. He was sentenced to an aggregate term of fifty years' imprisonment. The Arkansas Court of Appeals affirmed. *Ball v. State*, 2012 Ark. App. 665.

Ball subsequently filed in the trial court an untimely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2012). The petition was denied and dismissed. Ball lodged an appeal in this court from the order, but he did not file a brief, and the appeal was dismissed. *Ball v. State*, 2014 Ark. 152 (per curiam).

Now before us are Ball's pro se petition and supplemental petition to reinvest jurisdiction

Cite as 2015 Ark. 324

in the trial court to consider a petition for writ of error coram nobis. The petition for leave to proceed in the trial court is necessary because the trial court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. A writ of error coram nobis is an extraordinarily rare remedy. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Id.* 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 trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of the judgment. *Newman*, 2009 Ark. 539, 354 S.W.3d 61. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771.

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Id.* A writ of error coram nobis is available for addressing certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38.

In his petition and supplemental petition, Ball alleges that a writ of error coram nobis should issue on the grounds that the State withheld evidence from the defense at trial in the form of how a videotape of the victim's pretrial statement was made, that he was not afforded

effective assistance of counsel at trial, and that recent federal court decisions have established that Arkansas postconviction remedy, Rule 37.1, is inadequate to allow a meaningful review of claims of ineffective assistance of counsel.

Ball has appended to his coram-nobis petition his answer to the State's response to Ball's petition for writ of habeas corpus that he filed in his case in the United States District Court in 2014. He asserts that the response is "replete with proof" to show that this court should reinvest jurisdiction in the trial court to consider a petition for the writ. It appears that Ball is asking that this court examine the response filed in federal court to find some ground for the writ inasmuch as his petition is entirely devoid of any facts to show that there is a ground for the writ. If that is his desire, we decline to examine a response filed in another court for Ball's factual support for his grounds for the writ. The petitioner who seeks issuance of a writ of error coram nobis must make a full disclosure in his petition of specific facts relied upon and not merely state conclusions as to the nature of such facts; a bare allegation that a constitutional right has been denied will not suffice. *Howard*, 2012 Ark. 177, at 19, 403 S.W.3d 38, 50.

With respect to Ball's assertions that he was denied effective assistance of counsel, this court has repeatedly held that ineffective-assistance-of-counsel claims are not cognizable in error-coram-nobis proceedings and that such proceedings are not a substitute for raising ineffective-assistance-of-counsel claims under Rule 37.1. *White v. State*, 2015 Ark. 151, at 4, 460 S.W.3d 285, 288. If there was a ground for postconviction relief available to Ball under the Rule, it was his burden to raise it in a timely filed Rule 37.1 petition. *See State v. Tejeda-Acosta*, 2013

Cite as 2015 Ark. 324

Ark. 217, at 14, 427 S.W.3d 673, 681 (declining to expand the grounds for writ of error coram nobis to include ineffective-assistance-of-counsel claims).

As to Ball's allegation that our state postconviction remedy is not adequate to raise claims of ineffective assistance of counsel, he cites *Trevino v. Thaler*, 133 S. Ct. 1911 (2013) and *Sasser v. Hobbs*, 735 F.3d 833 (8th Cir. 2013) in support of his contention that grounds for the writ should be expanded to include ineffective-assistance claims. While we are mindful of the holdings in *Trevino* and *Sasser*, neither requires this court to expand the scope of a coram-nobis proceeding to permit a collateral challenge to a judgment of conviction that would otherwise be brought pursuant to Rule 37.1. See *Washington v. State*, 2014 Ark. 370, 439 S.W.3d 686 (per curiam); see also *Jarrett v. State*, 2014 Ark. 272 (per curiam). Ball has not established any controlling authority under federal law for this court to accept allegations of ineffective assistance of counsel as a ground for the writ. We will not consider an issue if the petitioner has failed to cite to any convincing legal authority in support of his argument. See *Barker v. State*, 2010 Ark. 354, at 6, 373 S.W.3d 865, 869.

The sole claim raised by Ball in his petition to this court that would, if proven, fit within the purview of a coram-nobis proceeding is the contention that the State withheld material evidence from the defense. Suppression of material exculpatory evidence by the State falls within one of the four categories of coram-nobis relief. *Isom v. State*, 2015 Ark. 225, at 2, 462 S.W.3d 662, 663. When evidence favorable to the defense is wrongfully withheld by the State, it is a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and cause to grant a writ of error coram

nobis. *Id.* To establish a violation of *Brady*, the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; prejudice must have ensued. *Id.* at 8, 462 S.W.3d 666-67.

Here, Ball's claim does not state a ground for the writ because he does not explain why the information concerning the manner in which the victim's pretrial statement was made would be exculpatory, provide facts to demonstrate that the State withheld the statement, or otherwise establish that there was a true *Brady* violation. The burden is entirely on the petitioner to provide factual support for his claims. *Cloird v. State*, 357 Ark. 446, 450, 182 S.W.3d 477, 479 (2004).

Petition and supplemental petition denied.