

Cite as 2015 Ark. 317

SUPREME COURT OF ARKANSAS

No. CR-15-95

MARCUS EDWARD CLAY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered September 17, 2015

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT
[NOS. 27CR93-5-1; 27CR-93-1;
27CR93-28-1; 27CR93-30-1; 27CR93-
7-1]HONORABLE CHRIS E WILLIAMS,
JUDGEAPPEAL DISMISSED.**JOSEPHINE LINKER HART, Associate Justice**

In 1993, appellant, Marcus Edward Clay, was convicted of five counts of rape and sentenced to life plus 80 years' imprisonment. His convictions, however, were reversed and remanded. *Clay v. State*, 318 Ark. 550, 886 S.W.2d 608 (1994). In 1995, Clay entered negotiated guilty pleas to two counts of first-degree sexual abuse and three counts of first-degree carnal abuse, for which he was sentenced to a total sentence of twenty years' imprisonment. In 2013, Clay filed an amended petition for a writ of error coram nobis. The circuit court held a hearing on the petition and entered an order denying relief. Clay now appeals from that order, arguing that he is entitled to the writ because his own military records were not disclosed to him before his 1993 trial to support his alibi defense. Further, he contends that his 1995 guilty pleas were coerced because the hearing at which he pled was not recorded and there is no transcript to show that his guilty pleas were voluntarily entered or that

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they satisfied the plea requirements set forth in the Arkansas Rules of Criminal Procedure. However, because Clay has served his sentence, his petition is moot; therefore, we dismiss his appeal.

A writ of error coram nobis is used to secure relief from a judgment rendered while there existed some fact which 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 judgment, such as a coerced guilty plea, the prosecution's withholding of material evidence, insanity at the time of trial, or a third-party confession between the conviction and the appeal. *See, e.g., Nelson v. State*, 2014 Ark. 91, at 2–3, 431 S.W.3d 852, 854. We have held, however, that when a petitioner in a coram-nobis proceeding has served the sentence imposed in the criminal judgment, the petition is moot because the remedy that the petitioner seeks—a new trial—is not available. *See, e.g., Green v. State*, 2015 Ark 25, at 2, 453 S.W.3d 677, 679 (per curiam); *Williford v. State*, 2014 Ark 86, at 2 (per curiam). The record establishes that, following his 1995 guilty pleas, Clay was released from imprisonment on April 25, 2000, and remained on parole until November 25, 2007. Thus, Clay's petition for a writ of error coram nobis is moot because he has served his sentence.

In his reply brief, Clay cites to *Magby v. State*, 348 Ark. 415, 72 S.W.3d 508 (2002) (per curiam), and asserts that in that case this court permitted a petitioner to proceed with the appeal of a denial of a petition for writ of error coram nobis because the petitioner was challenging the collateral use of that conviction, even though the petitioner had served his sentence of imprisonment. Clay, however, does not cite to evidence in this record that, at the

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time of the hearing on his 2013 amended petition, he continued to suffer any collateral consequences. Moreover, Clay's characterization of *Magby* is erroneous, and in a subsequent unpublished per curiam, *Magby v. State*, No. CR-02-24, 2003 WL 841073 (Mar. 6, 2003), we acknowledged that Magby sought to attack a 1969 conviction because it had been used to enhance a sentence imposed against him in federal court. This court, however, held that because Magby had already served the sentence imposed, his petition for writ of error coram nobis was moot and a new trial would not have been an appropriate remedy. *Id.*

Thus, because Clay has served his sentence, his petition is moot, and we therefore dismiss his appeal. In view of our dismissal, we decline to address Clay's remaining arguments on appeal.

Appeal dismissed.

The Law Offices of J. Brent Standridge, P.A., by: *J. Brent Standridge*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.