

## SUPREME COURT OF ARKANSAS

No. CR-05-472

WALLACE GARDNER

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered February 25, 2016

PRO SE PETITION TO REINVEST  
 JURISDICTION IN THE TRIAL  
 COURT TO CONSIDER A  
 PETITION FOR WRIT OF ERROR  
 CORAM NOBIS AND MOTION FOR  
 APPOINTMENT OF COUNSEL  
 [PULASKI COUNTY CIRCUIT  
 COURT, NO. 60CR-04-1077]

PETITION DENIED; MOTION  
 MOOT.

## PER CURIAM

In 2004, appellant Wallace Gardner was found guilty by a jury of capital murder and aggravated robbery. He was sentenced as a habitual offender to an aggregate term of life imprisonment without parole. We affirmed. *Gardner v. State*, 364 Ark. 506, 221 S.W.3d 339 (2006).

In 2010, Gardner filed in this court a pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis in the case. The petition was denied because Gardner did not state a ground for the writ. *Gardner v. State*, 2011 Ark. 27 (per curiam).

Now before us is Gardner's second pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis filed January 21, 2015. 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 v. State*, 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.

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*, 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. *Westerman v. State*, 2015 Ark. 69, at 4, 456 S.W.3d 374, 376.

In this second petition, Gardner seeks the writ on the ground that there were factual errors in this court's opinion rendered on direct appeal in 2006. He argues that, if the recitation of facts had been accurate, there would have been a different outcome to the direct appeal.

Gardner has not stated a ground within the four categories under which a writ of error coram nobis is proper. As stated, 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, and the petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. Claims of trial error or error by the appellate court are outside the scope of a coram-nobis proceeding. *Rhoades v. State*, 2015 Ark. 54, at 5, 455 S.W.3d 291, 294 (per curiam). This court does not consider in a coram-nobis action allegations that are an attempt to reargue issues addressed on appeal or which could have been raised in a timely petition for rehearing. *See Ventress v. State*, 2015 Ark. 181, at 6, 461 S.W.3d 313, 317 (per curiam).

Gardner filed with his coram-nobis petition a motion for appointment of counsel. As there is no merit to the petition, the motion is moot.

Petition denied; motion moot.