

Cite as 2018 Ark. 32
SUPREME COURT OF ARKANSAS
No. CR-17-638

KENNETH DALE RAMIREZ
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 8, 2018

PRO SE APPEAL FROM THE
MISSISSIPPI COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. 47BCR-08-383]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED.

JOHN DAN KEMP, Chief Justice

Appellant Kenneth Dale Ramirez entered a negotiated plea of guilty to first-degree murder and four counts of aggravated assault, and in accord with the State's recommendation, the trial court imposed consecutive sentences of 480 months' imprisonment on the murder charge and 72 months' imprisonment on each of the assault charges, for an aggregate term of 768 months' imprisonment. More than seven years after the judgment had been entered, Ramirez filed in the trial court a pro se petition for writ of error coram nobis. The court denied and dismissed the petition without a hearing. Ramirez brings this appeal, asserting that the trial court erred in denying his petition without a hearing and in failing to find that his plea was coerced. Ramirez did not state a basis in his petition to support issuance of the writ in that he failed to allege facts to

support a finding of coercion. Accordingly, we affirm the denial of coram nobis relief without a hearing.

Ramirez claimed in the petition that he was coerced by trial counsel, who exploited his fear of being given the death penalty and incorrectly assured him that he would be eligible for work release and furloughs if he accepted the plea agreement. Ramirez additionally argued that the State's evidence against him was insufficient to support the charges.¹ He asserted that he brought the petition after he had belatedly learned that he would not be eligible for work release or furloughs. The trial court reviewed the petition, plea-hearing transcript, and plea agreement,² and it concluded that Ramirez had failed to support his claim of coercion with a factual basis and that the petition was without merit.

The standard of review for the denial of a petition for writ of error coram nobis is whether the trial court abused its discretion in granting or denying the writ.³ *Scott v. State*,

¹ Ramirez also alleged in the petition that his sentence on the murder charge was illegally enhanced by using the assault charges. On appeal, he concedes, however, that the murder sentence was within the statutory range, and he does not reassert the argument that the sentence was illegally enhanced. All arguments made below but not raised on appeal are abandoned. *Carter v. State*, 2015 Ark. 166, 460 S.W.3d 781.

² The record includes the transcript of the plea hearing. It does not include the plea agreement that Ramirez signed, but Ramirez admitted in the petition that none of the documents from the file that he reviewed indicated that the State had agreed that he should be eligible for work release and furloughs as a condition of the plea agreement. For the reasons set out in this opinion, the disposition of the matter does not require a review of the signed agreement.

³ A petition for writ of error coram nobis is filed directly with the trial court when the judgment of conviction was entered on a plea of guilty or nolo contendere. *Thacker v.*

2017 Ark. 199, 520 S.W.3d 262. An abuse of discretion happens when the trial court acts arbitrarily or groundlessly. *Id.* The trial court's findings of fact on which it bases its decision to grant or deny the petition for writ of error coram nobis will not be reversed on appeal unless they are clearly erroneous or clearly against the preponderance of the evidence. *Smith v. State*, 2017 Ark. 236, 523 S.W.3d 354. There is no abuse of discretion in the denial of error coram nobis relief when the claims in the petition are groundless. *Id.* A hearing is not required if the petition clearly has no merit, either because it fails to state a cause of action to support issuance of the writ, or because it is clear from the petition that the petitioner did not act with due diligence. *Scott*, 2017 Ark. 199, 520 S.W.3d 262.

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. *Faulkens v. State*, 2017 Ark. 291. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *McCullough v. State*, 2017 Ark. 292, 528 S.W.3d 833. 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. *Id.*

State, 2016 Ark. 350, 500 S.W.3d 736 (citing *Noble v. State*, 2015 Ark. 141, 460 S.W.3d 774).

When this court reviews a trial court's ruling on a coram nobis petition on appeal, the appellant is limited to the scope and nature of the arguments he or she made below that were considered by the trial court in rendering its ruling, and we therefore limit our consideration on appeal to those claims, and any factual support for those claims, that were contained in the petition filed in the trial court. *Smith*, 2017 Ark. 236, 523 S.W.3d 354.

Ramirez argued in his petition and on appeal that he was coerced by his attorney, who advised him that a jury trial "was not an option" because Ramirez had confessed to shooting the victim, Palmore; there were several individuals who had witnessed the shooting; and the defense had no witnesses. Ramirez's claim is that he was pressured by counsel into entering a plea. His attorney indicated a plea deal was "the only option" because the evidence against him was overwhelming and that the likely outcome of a trial was conviction and the death penalty. Ramirez maintains that counsel had also explained that, with a lesser sentence, Ramirez would be eligible for work release and furloughs in prison. He asserts that this representation was important to his decision to accept the plea agreement and that he would have gone to trial had it not been made.

This court has held that, to rise to the level of coercion to warrant issuance of the writ, allegations that a plea was coerced must demonstrate the compulsion of a free agent by physical, moral, or economic force or threat of physical force. *Id.* Mere pressure to plead guilty occasioned by the fear of a more severe sentence is not coercion. *Nelson v. State*, 2014 Ark. 91, 431 S.W.3d 852. Ramirez's factual basis for his allegations of pressure in the form of misrepresentations by counsel does not support a cognizable claim of

coercion in coram nobis proceedings. This court has recognized that coram nobis proceedings do not provide relief to a petitioner who, although he couches his claims in terms of a coerced guilty plea, actually bases his claims on allegations of ineffective assistance of counsel and trial error. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524. Ramirez's allegation that counsel incorrectly advised him concerning his eligibility for early release was the type of claim that should have been raised under Arkansas Rule of Criminal Procedure 37 and not in coram nobis proceedings. *White v. State*, 2015 Ark. 151, 460 S.W.3d 285.

Ramirez's final claim for issuance of the writ is that he is actually innocent of the offense to which he pleaded guilty. This also does not establish a ground for the writ because the claim constitutes a direct attack on the judgment. *Williams v. State*, 2017 Ark. 313, 530 S.W.3d 844. The trial court did not err in finding that a hearing was not required because the petition clearly had no merit in that it failed to state a cause of action to support issuance of the writ. Despite Ramirez's allegations to the contrary, there was no need for the trial court to consider evidence of his attorney's ineffective assistance. Establishing that fact would not, as noted above, provide a basis for the writ.

Affirmed.

Kenneth Ramirez, pro se appellant.

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