

Cite as 2019 Ark. 109
SUPREME COURT OF ARKANSAS
No. CR-10-447

DAVID HUGH JONES, JR.
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered: April 18, 2019

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL COURT
TO CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS
[PULASKI COUNTY CIRCUIT COURT,
FIRST DIVISION, NO. 60CR-08-2603]

PETITION DENIED.

COURTNEY HUDSON GOODSON, Associate Justice

Petitioner David Hugh Jones, Jr., who was convicted of first-degree murder and being a felon in possession of a firearm and who was sentenced to an aggregate sentence of forty years' imprisonment in the Arkansas Department of Correction (ADC), brings this petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.¹ He contends that the judgment-and-commitment order is silent as to whether he should serve 100 percent of his sentence and asserts a myriad of claims that trial counsel should have performed his duties better during trial to obtain a different outcome. Because Jones has failed to demonstrate in the petition that the writ should issue, the petition is denied.

¹Jones's conviction and sentence were affirmed by the Arkansas Court of Appeals. *Jones v. State*, 2011 Ark. App. 92.

The trial court cannot entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal unless this court grants permission. *Carner v. State*, 2018 Ark. 20, 535 S.W.3d 634. A writ of error coram nobis is an extraordinarily rare remedy. *Martinez-Marmol v. State*, 2018 Ark. 145, 544 S.W.3d 49. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524. 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 that, through no negligence or fault of the defendant, was not brought forward before rendition of the judgment. *Carner*, 2018 Ark. 20, 535 S.W.3d 634. 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 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. *Martinez-Marmol*, 2018 Ark. 145, 544 S.W.3d 49. A court is not required to accept the allegations in a petition for writ of error coram nobis at face value. *Jackson v. State*, 2017 Ark. 195, 520 S.W.3d 242.

Jones fails to demonstrate he may be entitled to relief. Jones contends that he was “prejudicially given 100%” of his sentence to serve, which is “not marked on the

petitioner's judgment[-]and[-]commitment order.” He further contends that the judgment-and-commitment order is silent as to whether he was sentenced as a habitual offender and that the ADC has “taken it upon themselves to require the petitioner to serve 100% (percent) of his time[.]” Jones also argues that his counsel acted as “more of prosecutor and persecutor”; counsel did not raise the defense of use of physical or deadly force of himself, property, or a third party; and Jones suffered because counsel allowed the case to be tainted by the prosecutor's disregard of Jones having been “forced to protect his sister[.]” None of these claims are cognizable in a coram nobis proceeding because none of the claims allege 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.

The facts concerning any applicable sentencing statutes or Jones's claims regarding the percentage of his sentence to be served do not demonstrate some fundamental error of fact extrinsic to the record for which coram nobis relief would be applicable. See *Green*, 2016 Ark 386, 502 S.W.3d 524; *Roberts*, 2013 Ark. 56, 425 S.W.3d 771.² To the extent that Jones has argued that his counsel was ineffective, those claims are not cognizable in a coram nobis proceeding under our state law. Coram nobis proceedings are not to be used as a substitute for raising claims of ineffective assistance of counsel under our

²If Jones was attempting to argue a reduction in his sentence, coram nobis simply does not apply because the only remedy available if coram nobis relief is granted is a new trial. *Whitney v. State*, 2018 Ark. 138, at 1. (“The term ‘writ of error coram nobis’ has been recognized in our common law for all motions for new trial in a criminal case filed after the term of court has expired.”).

postconviction rule, Arkansas Rule of Criminal Procedure 37.1. *Martinez-Marmol*, 2018 Ark. 145, 544 S.W.3d 49. Regarding Jones's claims that could arguably be construed as trial error—his trial was tainted—assertions of trial error that were raised at trial, or which could have been raised at trial, are also not within the purview of coram nobis proceedings. *Carter*, 2018 Ark. 20, 535 S.W.3d 634. Such claims are not within the scope of the limited grounds on which the writ may issue, and a coram nobis proceeding does not provide the petitioner with a means to retry his or her case. *Id.*

Petition denied.

HART, J., concurs.