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SUPREME COURT OF ARKANSAS

No. CR-09-255

SCORPIO LARON CARROLL PETITIONER V. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered:** January 20, 2022 PRO SE SECOND PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS; MOTION FOR APPOINTMENT OF COUNSEL [PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION, NO. 60CR-08-1809] PETITION DENIED; MOTION MOOT.

ROBIN F. WYNNE, Associate Justice

Petitioner Scorpio Laron Carroll was convicted by a Pulaski County jury of first-degree murder and was sentenced to 540 months' imprisonment. The Arkansas Court of Appeals affirmed Carroll's conviction and sentence. *Carroll v. State*, 2009 Ark. App. 610. Carroll now brings this pro se second petition to reinvest jurisdiction in the trial court to consider a writ of error coram nobis in which he contends (1) he was denied a first-appearance hearing to determine probable cause to detain him after his arrest in violation of his Fourth and Fourteenth Amendment rights; (2) his confession was illegally obtained; (3) insufficient evidence supported his conviction; and (4) trial counsel was ineffective. Carroll subsequently also filed a motion for appointment of counsel. Because none of

Carroll's claims establish a ground for the writ, the petition is denied, rendering the motion for appointment of counsel moot.

I. *Nature of the Writ*

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. *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 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. We are 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.

II. *Grounds for the Writ*

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.

III. *Claims for Issuance of the Writ*

A. First-Appearance Hearing

Carroll contends that the State failed to provide him with a probable-cause first-appearance hearing in violation of his constitutional rights.[1] He further contends that "[t]his case does not involve the initial arrest, but rather the continuing incarceration of a presumptively innocent person while law enforcement conducts it[]s investigation to establish probable cause[,]" which resulted in a coerced statement. Whether Carroll had a prompt first-appearance hearing—or had one at all—is not a matter extrinsic to the record and could have been raised in the trial court. *See, e.g.*, *McClinton v. State*, 2015 Ark. 161 (per curiam) (Allegation that petitioner was denied a prompt first-appearance preliminary hearing and an arraignment were claims that could have easily been discerned at the time of the proceedings and raised in the trial court.). The petitioner bears the burden of demonstrating a fundamental error of fact extrinsic to the record, and Carroll has failed to do so. *See Roberts*, 2013 Ark. 56, 425 S.W.3d 771.

Moreover, Carroll's claim that the lack of a preliminary first appearance somehow affected the legality of his arrest is unavailing. Even an illegal arrest, without more, has never

[1]In his pro se first petition to reinvest jurisdiction, Carroll argued that there were clerical errors, mistakes in the process of notice and pleadings, and events outside the courtroom that affected the reliability of the proceedings within the courtroom. Carroll failed to offer any factual substantiation to establish that the allegations were within the purview of the writ, and his petition was denied. *Carroll v. State*, 2021 Ark. 111.

been viewed as a bar to subsequent prosecution or an absolute argument against a valid conviction. *See Biggers v. State*, 317 Ark. 414, 878 S.W.2d 717 (1994); *Singleton v. State*, 256 Ark. 756, 510 S.W.2d 283 (1974) (The court's jurisdiction to try the accused does not depend on the validity of the arrest.).

B. Incriminating Statement

Carroll claims that the lack of a first-appearance hearing and the ensuing delay for investigative purposes created circumstances under which he made an incriminating statement. Carroll contends that had he been taken before a magistrate and counsel been appointed, he would not have made an incriminating statement that was not knowingly, intelligently, and voluntarily given. Notably, Carroll does not assert that the facts surrounding his confession were unknown to him at the time of trial. *See Martinez-Marmol v. State*, 2018 Ark. 145, 544 S.W.3d 49. Carroll's claims are not claims regarding evidence extrinsic to the record. *See McCullough v. State*, 2020 Ark. 49. Carroll challenged the admission of his custodial statement by filing in the trial court a motion to suppress in which he claimed the interrogation was illegal because law enforcement lacked probable cause to arrest and detain him and that he had not been advised of his constitutional rights in accordance with *Miranda v. Arizona*, 384 U.S. 436 (1966), and thus could not give a knowing, intelligent, and voluntary waiver of his right against self-incrimination.[2] Carroll's challenge

[2]This court may take judicial notice in postconviction proceedings of the record on direct appeal without need to supplement the record. *Williams v. State*, 2019 Ark. 289, 586 S.W.3d 148.

regarding the incriminating statement is not a fact extrinsic to the record that would have prevented rendition of the judgment. *See Munnerlyn v. State*, 2018 Ark. 161, 545 S.W.3d 207.

C. Sufficiency of the Evidence

Carroll contends there was insufficient evidence that the victim was shot and killed by Carroll. Carroll claims that witness testimony, including the medical examiner's testimony, was inconsistent and that the State presented testimony and evidence that would make Carroll's involvement in the victim's death "patently unbelievable." Claims that attack the sufficiency of the evidence or the credibility of witnesses constitute a direct attack on the judgment and are not within the purview of a coram nobis proceeding. *Joiner v. State*, 2020 Ark. 126, 596 S.W.3d 7.

D. Ineffective Assistance of Counsel

Carroll contends that trial counsel did not provide him with the best possible defense and failed to meet the minimum standards of reasonably effective counsel. He further contends that trial counsel had a conflict of interest because counsel worked as a prosecutor—supervised by the prosecutor trying the case against him in this matter—in 2005 and 2006 when Carroll was a defendant.[3] Allegations of ineffective assistance of counsel do not support issuance of the writ. *Smith v. State*, 2020 Ark. 408. Coram nobis proceedings are not to be used as a substitute for timely raising claims of ineffective assistance of counsel under Arkansas Rule of Criminal Procedure 37.1. *Id.* Furthermore, to the extent Carroll contends

[3]Specifically, Carroll claims that trial counsel would "naturally defer to her previous supervisor . . . out of habit[.]"

there was a conflict with trial counsel, the claim is not one that falls within the recognized categories for coram nobis relief and does not otherwise provide a basis for issuance of the writ. *Joiner v. State*, 2019 Ark. 279, 585 S.W.3d 161. With regard to claims involving counsel operating under a conflict of interest, we have held that those are ineffective-assistance-of-counsel claims, which are outside the purview of coram nobis proceedings. *Id.*; *Nelson v. State*, 2014 Ark. 91, 431 S.W.3d 852.

Petition denied; motion moot.

Scorpio Laron Carroll, pro se petitioner.

Leslie Rutledge, Att'y Gen., by: *Joseph Karl Luebke*, Ass't Att'y Gen., for respondent.