

Cite as 2011 Ark. 306

SUPREME COURT OF ARKANSAS

No. CR 11-299

KIARA SMITH
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** July 27, 2011PRO SE MOTION FOR LEAVE TO
FILE BELATED BRIEF [MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT, CR 96-
17, HON. CINDY THYER, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

In 1996, appellant Kiara Smith entered a plea of guilty to robbery and was sentenced to twenty years' imprisonment with an additional suspended sentence of ten years. In 2006, he was found to have violated the terms of the suspended sentence and sentenced to serve 48 months' imprisonment.

In 2010, he filed in the trial court a pro se petition for writ of error coram nobis, which was denied. He has lodged an appeal in this court from that order. Appellant tendered his brief-in-chief belatedly and now seeks to have leave to file the belated brief.

As it is clear from the record that appellant could not prevail if the appeal were permitted to go forward, the appeal is dismissed. The motion is moot. This court has consistently held that an appeal from the denial of a petition for writ of error coram nobis will

Cite as 2011 Ark. 306

be dismissed if the appeal is without merit. *Williams v. State*, 2011 Ark. 203 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Williams*, 2011 Ark. 203; *Thrash v. State*, 2011 Ark. 118 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Barker v. State*, 2010 Ark. 354 , ___ S.W.3d ___; *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___(per curiam); *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: 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. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Rayford v. State*, 2011 Ark. 86 (per curiam); *Barker*, 2010 Ark. 354; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). 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 circuit court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Scott v. State*, 2010 Ark. 363 (per curiam); *Grant*, 2010 Ark. 286 (citing *Newman v. State*, 2009 Ark. 539, ___ S.W.3d ___); see also *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam).

Cite as 2011 Ark. 306

Appellant in his petition contended that the trial court did not have jurisdiction to revoke the suspended sentence in his case because the ten-year term of suspended imposition of sentence had elapsed. He alleged also that the fact that the prosecutor filed the motion to revoke the suspended sentence amounted to “an element of new scientific evidence.”

Appellant’s claims were not within the purview of an error coram nobis proceeding. Clearly, the circumstances surrounding the revocation, including the time table, were known to appellant when the revocation proceeding was held in 2006. Any arguments he desired to raise concerning the validity of the revocation could have been raised at that time. A coram nobis petition is not an avenue to reopen a closed proceeding.

Also, it appears from the record that the petition was moot. The revocation judgment was entered on August 15, 2006. Appellant filed the petition for writ of error coram nobis on October 5, 2010, which was more than forty-eight months after the forty-eight month sentence was imposed. If the record is accurate, appellant had served the sentence when the petition was filed. The writ provides the petitioner relief from his or her criminal judgment of conviction, and, if granted, the petitioner will be given a new trial, or, in the case of a revocation, a new revocation proceeding. *See Penn v. State*, 282 Ark. at 573, 574, 670 S.W.2d at 428 (1984). As petitioner had served the sentence imposed in 2006, his claim was moot in 2010, and a new revocation proceeding would not be an appropriate remedy, even if there were cause to grant the writ. *Webb v. State*, 2009 Ark. 497 (per curiam); *see also Anderson v. State*, 352 Ark. 36, 98 S.W.3d 403 (2003) (per curiam). Because petitioner failed to state

Cite as 2011 Ark. 306

grounds upon which to base a petition for writ of error coram nobis, and because any grounds for the writ that petitioner might state would be moot, he was not entitled to the writ.

Appeal dismissed; motion moot.