

Cite as 2009 Ark. 437

ARKANSAS SUPREME COURT

No. CR 98-1167

RICKY LEE SCOTT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 24, 2009

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS, MOTION
TO SUPPLEMENT RECORD AND
PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
CROSS COUNTY, CR 96-61]

PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
DENIED; MOTION TO SUPPLEMENT
RECORD AND PETITION FOR WRIT
OF MANDAMUS MOOT.

PER CURIAM

In 1998, petitioner Ricky Lee Scott was found guilty by a jury of first-degree murder and sentenced to life imprisonment. We affirmed. *Scott v. State*, 337 Ark. 320, 989 S.W.2d 891 (1999).

Thereafter, petitioner unsuccessfully sought postconviction relief in circuit court. In addition, he previously filed in this court two petitions to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis that we denied. *Scott v. State*, CR 98-1167 (Ark. Oct. 12, 2006) (per curiam); *Scott v State*, CR 98-1167 (Ark. Dec. 4, 2008) (per curiam). Now before us is petitioner's third pro se petition to reinvest jurisdiction in the trial court to consider a

Cite as 2009 Ark. 437

petition for writ of error coram nobis.¹ Petitioner also filed in this court a pro se motion to supplement the record in the direct appeal that was resolved in 1999, and a pro se petition for writ of mandamus concerning the instant matter.²

The petition to reinvest jurisdiction in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis, an extraordinary remedy that is rarely granted, 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). These errors 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. *Id.*

After a conviction has been affirmed, the writ is appropriate to secure relief from a judgment when a petitioner can demonstrate that a fundamental error of fact existed that was not addressed, or could not have been addressed, at trial because it was extrinsic to the record and somehow hidden or unknown to the petitioner. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004); *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). Moreover, a petitioner must show that had the fact

¹For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

²The petition for writ of mandamus is directed toward Dustin McDaniel, the Arkansas Attorney General, individually. In the mandamus petition, petitioner asks this court to direct Mr. McDaniel to respond to petitioner's motion to supplement the record, and to complete the record as requested therein by petitioner.

Cite as 2009 Ark. 437

been known to the trial court, it would have prevented rendition of the judgment, and it was not brought forward before rendition of judgment through no negligence or fault of the petitioner.

Cloird, supra; Larimore, 341 Ark. 397, 17 S.W.3d 87.

Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984). The court is not required to accept the allegations contained in a petition at face value. *Cloird, supra*. “The mere naked allegation that a constitutional right has been invaded will not suffice. The application should make a full disclosure of specific facts relied upon and not merely state conclusions as to the nature of such facts.” *Cloird*, 357 Ark. at 450, 182 S.W.3d at 479 (quoting *Larimore*, 341 Ark. at 407, 17 S.W.3d at 93).

Petitioner was initially charged with capital murder. Here, he claims that trial counsel failed to convey to petitioner a plea offer made by the prosecutor in January 1997. Petitioner further contends that had he known about the plea offer, he would have accepted it. The record reflects that the prosecutor offered to amend the charge of capital murder to second-degree murder and recommend a twenty-year sentence in exchange for petitioner’s guilty plea. The offer also addressed a rape charge pending against petitioner that was later dismissed.

As grounds for coram nobis relief, petitioner contends that a fundamental error occurred when the prosecutor failed to disclose the written plea offer. Petitioner contends that he made this discovery during the course of a 2006 request for documents pursuant to the Arkansas Freedom of Information Act (“FOIA”), currently codified at Arkansas Code Annotated §§25-19-101 to -109 (Repl. 2002 & Supp. 2007).³ Petitioner couches this claim in terms of “newly discovered evidence”

³Petitioner did not raise this argument in either of the prior coram nobis petitions.

Cite as 2009 Ark. 437

or material evidence being withheld by the prosecutor, allegedly resulting in a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Petitioner thus attempts to categorize the claim as one for which coram nobis relief is available. *Pitts, supra*.

However, petitioner's allegation of suppression by the prosecutor pertains to the posttrial FOIA request made by petitioner. The gravamen of petitioner's claim is counsel's alleged failure to convey a plea offer, which is properly addressed through a claim of ineffective assistance of counsel. *Riggins v State*, 329 Ark. 171, 946 S.W.2d 691 (1997). Ineffective assistance claims are not cognizable in petitions for coram nobis relief. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

Even if the petition were to be construed as alleging that the prosecutor suppressed the plea offer prior to trial, petitioner has stated no ground for coram nobis relief. For the writ to issue following affirmance of the conviction, petitioner must show a fundamental error of fact that was extrinsic to the record below, but was hidden from appellant or counsel, or otherwise unknown. *Cloird, supra; Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). Also, a petitioner must show that had the fact been known to the trial court, it would have prevented rendition of the judgment, and it was not brought forward before rendition of judgment through no negligence or fault of the petitioner. *Cloird, supra; Larimore*, 341 Ark. 397, 17 S.W.3d 87.

In any event, the allegations in the petition appear to be neither reasonable nor probably truthful. *Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003). According to the petition, a second plea offer was made by the prosecutor on the morning of the jury trial in March 1998. The State offered to reduce the capital murder charge to manslaughter and recommend a ten-year sentence in

Cite as 2009 Ark. 437

exchange for petitioner's guilty plea. On the record, petitioner rejected that offer and proceeded to trial.

The court is not required to accept the allegations contained in a petition at face value. *Cloird, supra*. By rejecting a more favorable plea offer on the eve of the jury trial, it is not reasonable or probably truthful for petitioner to now claim that he would have accepted the less-favorable initial plea offer had he only known about it in 1997. *Echols, supra*.

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird, supra*. Here, petitioner fails to make a showing that the allegations contained in his petition are meritorious or are grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis. As no substantive basis exists for granting the petition, we need not reach the issue of whether petitioner exercised due diligence in proceeding for the writ. Because the petition to reinvest jurisdiction in the trial court to consider a petition for writ of coram nobis relief is denied, the motion to supplement the record and the petition for writ of mandamus are moot.

Petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis denied; motion to supplement record and petition for writ of mandamus moot.