

Cite as 2009 Ark. 464

ARKANSAS SUPREME COURT

No. CR 02-90

ERIC BURGIE
Petitioner

v.

STATE OF ARKANSAS
Respondent**Opinion Delivered** October 1, 2009PRO SE MOTION AND
SUPPLEMENTAL MOTION FOR
RECONSIDERATION OF DENIAL OF
PETITIONS TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF GARLAND
COUNTY, CR 2000-366]**MOTIONS DENIED.****PER CURIAM**

In 2001, a jury convicted petitioner Eric Burgie on charges of capital murder and aggravated robbery and sentenced him to life imprisonment without parole. This court affirmed the judgment on trial counsel's no-merit brief. *Burgie v. State*, CR 02-90 (Ark. Feb. 20, 2003) (per curiam). Petitioner filed petitions in which he requested this court to reinvest jurisdiction in the trial court so that he might proceed with a petition for writ of error coram nobis.¹ We denied the petitions. *Burgie v. State*, 2009 Ark. 382 (unpublished per curiam). Petitioner has now filed a pro se motion for reconsideration and a pro se supplemental motion for reconsideration. Neither of the motions has merit.

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal. After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

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In the pending motions, petitioner asserts, both individually and in conjunction with his other arguments, that this court should consider his claim that trial counsel was ineffective. He acknowledges that a claim of ineffective assistance of counsel is not cognizable in a petition for writ of error coram nobis, and that a claim of ineffective assistance of counsel in itself is not a ground to grant a writ of error coram nobis. *See McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). Moreover, a claim is not cognizable in a petition for writ of error coram nobis if it may be properly raised in a timely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 or on direct appeal. *See id.*

Petitioner contends that these allegations, although not cognizable, should be considered with the claims previously raised and that these allegations somehow overcome the deficiencies of his claims for the writ discussed in our previous opinion. Petitioner offers no authority for that proposition, which is, as he acknowledges, at odds with our precedent. Petitioner provides no basis for us to consider overturning that precedent. Petitioner's claims of ineffective assistance may not be considered as a basis, or as a part of the basis, for a claim under the writ.

In addition to his claims of ineffective assistance, petitioner reasserts a number of his previous allegations of trial error and attempts to clarify his claim that certain statements omitted from a probable cause affidavit would have benefitted his defense. Although petitioner makes conclusory assertions that knowledge of the omitted statements would have led to exclusion of his confession and a key witness's testimony, he does not provide any basis for a successful challenge to admission of the evidence.

Nor does petitioner establish a valid excuse for the delay in raising his claims for error coram

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nobis relief. He contends that he is more knowledgeable now than at the time of his trial and the appeal of the judgment, but he does not demonstrate good cause for a delay of more than six years in raising a claim for error coram nobis relief.

Petitioner asserts that we should expand our basis for issuance of the writ. We decline to do so. Petitioner does not demonstrate circumstances meriting issuance of the writ that justify recognizing a new category of claims for relief. *See Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984).

Petitioner also asserts error in considering his motion under the Arkansas Freedom of Information Act, Arkansas Code Annotated sections 25-19-101 to -109 (Repl. 2002 and Supp. 2007), in conjunction with his petitions for the writ. He reasserts his claim of entitlement under the act, but once again provides no need sufficient to support a right to photocopying at public expense. Considering petitioner's claim separately would produce no different result.

Petitioner has stated no meritorious basis to reconsider our previous decision. His motions are therefore denied.

Motions denied.