SLIP OPINION

Cite as 2009 Ark. 572

SUPREME COURT OF ARKANSAS

No. CACR 03-1127

ANARIAN CHAD JACKSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered November 12, 2009

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [CIRCUIT COURT OF PULASKI COUNTY, CR 2001-4006]

PETITION DENIED.

PER CURIAM

The Arkansas Court of Appeals affirmed a judgment as to the conviction of petitioner Anarian Chad Jackson on a charge of second-degree murder and a sentence of eighty years' imprisonment. *Jackson v. State*, CACR 03-1127 (Ark. App. Dec.1, 2004). Petitioner has now, for the third time, filed a pro se petition in this court seeking permission to proceed in the trial court with a petition for writ of error coram nobis.[1] 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).

As in one of his previous petitions, petitioner asserts as grounds for relief the prosecution's withholding of evidence concerning information as to deals made with two

[1]For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

witnesses who had testified that there had been no offers or promises made in exchange for their testimony. *See Jackson v. State*, CACR 03-1127 (Ark. Dec.11, 2008) (per curiam). Also as in his previous petition, petitioner offers only conclusory statements maintaining that information was withheld and fails to state any facts in support of his contention that the State did withhold evidence concerning the existence of the alleged agreements with the witnesses, aside from statements made either at trial or in a sentencing hearing for one witness, Ammar Mahdi. Petitioner again alleges that the other witness, Chris Bush, made statements recanting his testimony, and includes a statement from Mr. Bush to that effect.

Petitioner alleges no new facts in support of these same claims previously raised, and the State argues that the law of the case controls as to those claims. We do not agree that the law-of-the-case doctrine is applicable here. Under that doctrine, the conclusion of the appellate court in one opinion becomes the law of the case on subsequent proceedings on the same cause and the matter is res judicata. *Green v. State*, 343 Ark. 244, 33 S.W.3d 485 (2000). The proceedings on the previous petition for a writ of error coram nobis do not fall within the doctrine.

The purpose of the law-of-the-case doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single, continuing lawsuit. *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003) (clarifying the court's previous holding in *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002) (per curiam), that res judicata was inapplicable to a habeas proceeding where jurisdiction was at issue). In *Cloird*, we overruled previous caselaw to the extent that it conflicted with the proposition that the law-of-the-case doctrine does not bar

consideration of an issue unless there has been an adjudication of the issue in the first appeal. *Id.* We held that where a procedural bar prevented the court from reaching the merits of the issue, the issue had not been adjudicated. *Id.*

When a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis is presented to this court, adjudication of an issue occurs only if the opinion grants the petition, and the petitioner then files his petition for the writ in the trial court. The parties are provided an opportunity to be heard, however, and a final decision may be rendered as to whether an issue is cognizable in a petition for the writ. A second petition to reinvest jurisdiction in the trial court to consider a petition for the writ, although it may challenge the same judgment as a previous petition, does not concern matters decided during the course of a single, continuing lawsuit. The law-of-the-case doctrine is not applicable to a successive petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

Postconviction proceedings for extraordinary relief, such as applications for writs of error coram nobis or habeas corpus, impose unique considerations upon a court in balancing the purpose of doctrines, such as law of the case, that are founded on former-adjudication as a bar to proceeding for the writ. A court must weigh the need to achieve finality in litigation against the interest in providing defendants with a fair trial and proceedings. *See Sanders v. United States*, 373 U.S.1,8 (1963) (decision prior to statutory restrictions on subsequent habeas pleadings). In *Sanders*, the Supreme Court discussed the common law development of habeas relief, noting that principles of res judicata did not apply, and observed, "Conventional notions of finality of

litigation have no place where life or liberty is at stake." *Id.* at 8. The Court went on to recognize, however, that successive applications were properly denied where a petitioner sought to retry a claim previously fully considered and decided against him. *Id.* at 9.

This court has at times experienced the difficulties in balancing these same considerations. *See Fairchild v. Norris*, 317 Ark. 166, 876 S.W.2d 588 (1994). Like habeas, error coram nobis relief does not by its nature fall easily within the framework of former-adjudication analysis.

Having concluded that the law-of-the-case doctrine does not apply, we turn to an examination of the application of the more inflexible analysis for res judicata, as that doctrine may apply in criminal cases. *See Mason v. State*, 361 Ark. 357, 206 S.W.3d 869 (2005). Similar to the purpose behind the law-of-the-case doctrine, the rationale for the doctrine of res judicata is the policy of the law to end litigation, once an issue or claim has been fully litigated. *Id.* This court's res judicata analysis separates the doctrine into two distinct facets, claim preclusion and issue preclusion. *Dilday v. State*, 369 Ark. 1, 250 S.W.3d 217 (2007).

Under claim preclusion, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action. *Id.* Application of claim preclusion prevents the raising of any issue in the second proceeding that could have been, but was not, raised in the first proceeding. *Hill v. State*, 341 Ark. 211, 16 S.W.3d 539 (2000).

Under issue preclusion, a decision by a court of competent jurisdiction on matters which were at issue, and which were directly and necessarily adjudicated, bars any further litigation on those issues by the plaintiff or his privies against the defendant or his privies on the same issue.

Mason, 361 Ark. at 367, 206 S.W.3d at 875. Application of issue preclusion, applies once an issue of ultimate fact has been determined by a valid and final judgment, and that issue cannot again be litigated between the same parties in any future litigation. *Id.* at 377, 206 S.W.3d at 881.

In balancing the considerations set forth earlier in this opinion, we now conclude that a petitioner should not be barred from raising an issue not raised in a previous petition for coram nobis relief by res judicata. The question of whether the petitioner acted with due diligence concerning the issue may be raised, but claim preclusion should not apply to a coram nobis proceeding. Under the circumstances at hand, the issue has not been litigated because that issue was never presented to the trial court. Issue preclusion is also inapplicable.

A petitioner may be able to allege facts to cure deficiencies in the petition, and assuming that the petitioner acts with due diligence, should be allowed to do so. We do not believe that application of res judicata should bar a subsequent application for coram nobis relief on the same grounds, provided that the petitioner does allege sufficient facts to provide grounds for the writ. A court has discretion to determine whether the renewal of a petitioner's application for the writ, with additional facts in support of the same grounds, will be permitted. *See People v. Sharp*, 157 Cal. App. 2d 205, 320 P.2d 589 (Ct. App. 1958) (denial of the writ of error coram nobis is not res judicata, but leaves to the sound discretion of the court the question whether renewal of the application, upon the same ground but upon an adequate statement of facts, will be permitted); *see also United States v. Camacho-Bordes*, 94 F.3d 1168 (8th Cir. 1996) (res judicata did not apply to bar second petition for writ of coram nobis, but abuse of writ doctrine applied to subsume res judicata); *Wong Doo v. United States*, 265 U.S.239 (1924) (habeas analysis refusing to

apply res judicata but holding that prior adjudication bore vital relevance to the exercise of the court's discretion in determining whether to consider the opinion).

In this case, petitioner's successive application for coram nobis relief in this court is an abuse of the writ. Petitioner alleges few, if any new facts, and he does not allege any fact sufficient to distinguish his latest claims. The issues are the same. As was stated, petitioner's previous claims were not cognizable in a petition for the writ, and petitioner states no new facts sufficient to support a cognizable claim of fundamental error.

Petitioner includes also within his latest petition an assertion that the evidence against him was insufficient. Extraordinary relief is not a substitute for an appeal. *See Dean v. Williams*, 339 Ark. 439, 6 S.W.3d 89 (1999); *Gran v. Hale*, 294 Ark. 563, 745 S.W.2d 129 (1988). As we noted in our previous opinion, the writ is only appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). Petitioner's claims do not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis, and we accordingly deny the petition.

Petition denied.