

# ARKANSAS SUPREME COURT

No. CR 03-800

ANARIAN CHAD JACKSON  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered April 2, 2009

PRO SE PETITION TO REINVEST  
JURISDICTION IN TRIAL COURT TO  
CONSIDER A PETITION FOR WRIT  
OF ERROR CORAM NOBIS [CIRCUIT  
COURT OF PULASKI COUNTY, CR  
2001-1009]

PETITION DENIED.

## PER CURIAM

In 2002, petitioner Anarian Chad Jackson was convicted by a jury of first-degree murder and sentenced to life imprisonment as a habitual offender.<sup>1</sup> We affirmed. *Jackson v. State*, 359 Ark. 297, 197 S.W.3d 468 (2004).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.<sup>2</sup> 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 is an extraordinarily rare remedy, more known for its denial than its approval. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under

<sup>1</sup>A charge of being a felon in possession of a firearm was severed and tried separately, and is not at issue here.

<sup>2</sup>For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

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, a petitioner must show a fundamental error of fact extrinsic to the record for the writ to be issued. *State v. Larimore, supra*. The function of the writ is to secure relief from a judgment rendered while there existed some fact which 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 judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004).

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 v. State, 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 v. State*, 357 Ark. at 450, 182 S.W.3d at 479 (quoting *State v. Larimore*, 341 Ark. at 407, 17 S.W.3d at 93). The burden is on a petitioner to show that the writ is warranted. *Cloird v. State, supra*.

Petitioner claims that his due process rights had been violated by prosecutorial misconduct in the form of suppression of material evidence. Suppression of material exculpatory evidence by the prosecutor is one of the four categories for which coram nobis relief is available. *Pitts v. State*,

*supra*. The three-prong test to determine whether such suppression has occurred requires showing that (1) the evidence at issue is favorable to the accused, either because it is exculpatory, or because it is impeaching, (2) the evidence was suppressed by the State, either willfully or inadvertently, and (3) prejudice ensued. *Brady v. Maryland*, 373 U.S. 83 (1963); *Sanders v. State*, 374 Ark. 70, \_\_\_ S.W.3d \_\_\_ (2008) (per curiam). To merit relief, a petitioner must demonstrate that there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the information been disclosed at trial. *Sanders v. State, supra*.

The prosecutorial misconduct alleged by petitioner largely concerns the testimony of witnesses who testified at trial for the prosecution. Petitioner maintains here that the prosecutor suppressed truthful testimony, that was material and either exculpatory or impeaching, when questioning these witnesses. As noted, suppression of material evidence by the prosecutor provides a basis for coram nobis relief. *Pitts v. State, supra*. Stated another way, petitioner maintains that the prosecutor elicited false testimony from the trial witnesses.<sup>3</sup>

The first claim for relief concerns Takesha Griffin, petitioner's first cousin. Prior to petitioner's arrest for murder, she gave a statement to the Little Rock Police Department that indicated petitioner's participation in the crime. At the time Takesha made the statement under oath, she had been living at the police department building for several days. She later affirmed the statement before a federal grand jury.

At trial, Takesha denied any recollection of giving a statement to the police or the information contained in the statement. She attributed her failure to recall the substance of her

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<sup>3</sup>Petitioner utilizes these claims interchangeably. However, when a claim is couched in terms of eliciting false trial testimony, rather than suppressing truthful testimony, petitioner cannot demonstrate the existence of a fundamental error of fact extrinsic to the record as a prerequisite for coram nobis relief. *State v. Larimore, supra*.

statement to her addiction to crack cocaine, which she claimed she used for several days before giving the information to the police. She also alleged that the police pressured her to give them only negative information about petitioner before she would be able to leave the building.

In response to Takesha's allegations about the conditions surrounding her statement to the police, the prosecutor questioned the detectives involved in taking her statement. Detectives Knowles and White testified at trial that Takesha was not under arrest during the time she stayed at the department, she was free to leave anytime she chose to do so, and they did not make any promises or threats to obtain her statement. The detectives also stated that Takesha did not appear to be high or going through a drug withdrawal during her time in the building and they described her as cooperative and friendly. The audiotape from the detectives' interview of Takesha was played for the jury and introduced into evidence.<sup>4</sup>

In the coram nobis petition, petitioner accuses the police of holding Takesha "captive" until she gave a statement that was detrimental to petitioner, and that she would have done or said anything to obtain her freedom. As a basis for relief, he alleges that the prosecutor elicited false testimony from the detectives that suppressed the truth about Takesha's time with the police. Petitioner maintains that by soliciting false testimony from the detectives, the jury was unfairly left with the impression that Takesha's statement was given without duress and of her own free will. In addition, petitioner contends that the prosecutor knew the testimony was false when the prosecutor elicited the testimony from the detectives, and the prosecutor's actions violated petitioner's right to obtain impeaching evidence.

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<sup>4</sup>In the direct appeal, petitioner argued unsuccessfully that Takesha's statements to the police and the grand jury were inadmissible hearsay and violated the Confrontation Clause of the Sixth Amendment to the United States Constitution. Those issues are not the same ones being raised by petitioner in this matter.

As an initial matter, petitioner must present proof that Takesha was held captive by the police to factually support the contention that the prosecutor suppressed material, exculpatory evidence in violation of *Brady v. Maryland*. Petitioner's allegations of captivity contained in the petition are conclusory and need not be taken at face value. *Cloird v. State, supra*. Takesha's affidavit attached to the instant petition as an exhibit does not contain such an allegation. She testified at trial that the police pressured her to give a negative statement about petitioner to gain her freedom but she did not claim to be held captive.

As petitioner fails to present proof that Takesha was in fact held captive, the resulting allegations of suppressing the truth and eliciting false testimony are merely conclusory. *Cloird v. State, supra*. To the extent that Takesha's testimony could have supported this argument, her trial testimony by definition was not extrinsic to the record. Petitioner was required to show there existed a fundamental error of fact that was extrinsic to the record to obtain coram nobis relief. *State v. Larimore, supra*. Other than his conclusory allegations, petitioner offers no basis to support a *Brady* violation by suppressing material evidence or eliciting false testimony. *Sanders v. State, supra*.

Next, petitioner contends that an aggravated-robbery charge filed against Takesha was dismissed in exchange for her statement to the police that implicated petitioner in the murder. He maintains that Takesha was arrested on the criminal charge and her above-described captivity resulted from the discovery by the police that she was affiliated with petitioner. As the basis for coram nobis relief, petitioner alleges that the prosecutor suppressed this impeaching evidence in violation of *Brady v. Maryland*.

At trial, however, defense counsel attempted to impeach Takesha's testimony with this very allegation. During the ensuing bench conference, Takesha's aggravated-robbery case file, including

dismissal of the charges, was examined. After review, trial counsel agreed that there was no evidence that Takesha gave her statement to the police in this matter in exchange for favorable treatment of another criminal matter, notwithstanding Takesha's declaration contained in her affidavit attached to the instant petition. The bench conference, made a part of the trial record, was not extrinsic to the record and did not demonstrate that material impeaching evidence was suppressed under *Brady*. *State v. Larimore, supra*. In both claims pertaining to Takesha Griffin, petitioner fails to establish entitlement to a writ of error coram nobis. *Cloird v. State, supra*.

In his next argument, petitioner alleges that the prosecutor also suppressed material impeaching evidence regarding Roderick Pennington, who is known in his gang as Roscoe. Prior to petitioner's arrest, Pennington gave a statement to Stuart Sullivan, an officer with the Little Rock Police Department Special Investigations Unit. Detective Sullivan also served on a gang task force with the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and interviewed a number of gang members in that capacity. In his statement to Detective Sullivan, Pennington confirmed, among other things, that petitioner was the leader of a gang and rewarded another gang member, Chris Bush, for shooting the victim, Charles Raynor. Pennington also appeared before the federal grand jury, where he testified and affirmed the information contained in his statement to Detective Sullivan.

At petitioner's trial, Pennington was called as a prosecution witness. On the stand, he denied being a gang member, speaking with Detective Sullivan, giving information to Detective Sullivan that was contained in the statement and appearing in federal court. After his denials, the prosecutor introduced into evidence the statement that Pennington made to Detective Sullivan, as well as evidence that Pennington affirmed his statement to Detective Sullivan while testifying before a

federal grand jury.<sup>5</sup>

In the petition for coram nobis relief, petitioner avers that the prosecutor suppressed a quid-pro-quo bargain between Pennington and the State. Petitioner contends that Pennington revealed the location of Chris Bush and a .40-caliber handgun and agreed to testify before the grand jury. Petitioner further alleges that in exchange, the prosecutor agreed to not file a criminal charge against Pennington, i.e., one count of being a felon in possession of a firearm. In support, petitioner offers the affidavit of Darrick Morgan,<sup>6</sup> another gang member, and an excerpt from the grand-jury transcript.

The exhibits submitted by petitioner as validation of this argument fail to substantiate his allegation of a quid-pro-quo arrangement. *Cloird v. State, supra*. The affidavit offered in support of this contention is made by someone other than Pennington and who relies upon hearsay to reach mere conclusions.<sup>7</sup> *Id.* Petitioner also offers an excerpt from Pennington's grand-jury testimony. In the transcript, Pennington testified only that he had no adult felony convictions. Presumably, petitioner offers this testimony to validate his claim that the police either dismissed a felony charge pending against Pennington or did not file it.

Neither of the exhibits offered by petitioner factually establish that Pennington testified or

<sup>5</sup>Petitioner's direct appeal challenged the admissibility of Pennington's grand-jury testimony and the transcript of that testimony, and claimed that the evidence precluded his rights under the Confrontation Clause of the Sixth Amendment. That argument is not the one being raised by petitioner in this matter.

<sup>6</sup>Morgan's first name was misspelled as "Derrick" during the trial.

<sup>7</sup>Affiant Darrick Morgan averred that when he and Pennington were stopped by the police, two guns were found in their car. Both men were arrested for being a felon in possession of a firearm and questioned by the police. Morgan claimed that Pennington gave the police false information that implicated petitioner in the victim's murder, and that Pennington later told Morgan that the police dropped the charge against him based on the false information pertaining to petitioner. In his affidavit, Morgan implied that the felon-firearm charge filed against him was not dismissed because he did not supply the police with false information as had Pennington.

gave information to the police in exchange for a criminal charge to be dismissed or not filed. Without such a factual foundation, petitioner cannot sustain the argument that the prosecutor suppressed impeaching evidence that concerned Pennington. The burden rests with petitioner to establish that the writ is warranted. *Id.* As this court is not required to accept petitioner's contentions contained in the petition, petitioner fails to allege a valid basis for coram nobis relief as to Pennington. *Penn v. State, supra.*

A third prosecution witness, Chris Bush, was convicted along with petitioner for the murder of Raynor, a rival gang member. Petitioner claims here that the prosecutor suppressed impeachment evidence that concerned Bush. Allegedly, Bush provided his assistance and testimony to the police in order to convict petitioner, and, in exchange, Bush was able to remain out of jail and had "numerous" criminal charges dismissed. In support, petitioner provides affidavits<sup>8</sup> and an excerpt from an interview of Bush that was apparently conducted by Detective Knowles.<sup>9</sup> As further support, petitioner cites to several trial-transcript pages in the coram nobis petition.

As with similar allegations in this matter, petitioner's claim of prosecutorial suppression pertaining to Bush amounts to a conclusory allegation which need not be considered to be inherently truthful. *Cloird v. State, supra; Penn v. State, supra.* The exhibits that are affixed to the petition contain no direct or indirect proof that the prosecutor suppressed, or failed to disclose, impeachment

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<sup>8</sup>Affiant Antonio Jackson, who had been Bush's cell mate, claimed that Bush was remorseful for giving the police false testimony that petitioner killed Raynor. Additionally, a declaration by Sargent Thomas with the Arkansas Department of Correction was submitted as an exhibit to the petition. In his declaration, Thomas affirmed that Bush signed a statement in which Bush claimed that he "has no problem" with affiant Jackson, presumably submitted by petitioner to bolster the veracity of Jackson's affidavit.

<sup>9</sup>Bush testified at trial that he gave two statements to the police about the murder. Petitioner's exhibit is a two-page interview transcription, showing dialog between "Bush" and "Knowles" with no additional identifying information. The transcript of this interview is not contained in the direct appeal record.

evidence, or elicited false testimony at trial from Bush about the existence of a quid-pro-quo arrangement. Petitioner thus fails to establish the factual basis for a *Brady* violation. *Sanders v. State, supra*. Moreover, the trial-transcript pages relied upon by petitioner as support for his claim are not extrinsic to the record as required by *State v. Larimore, supra*. Petitioner fails in this argument regarding Bush to demonstrate entitlement to issuance of the writ. *Cloird v. State, supra*.

In his final argument, petitioner contends that the fatal bullet was shot from a .357 handgun that the police confiscated from Morgan and Pennington during the traffic stop in which a Tech-9 semi-automatic pistol was also recovered. In his argument for relief, petitioner claims that the jury was entitled to hear about the gun that fired the fatal shot and its “material history,” but the information was suppressed by Little Rock Police Department. Suppression of this information, he contends, violated his constitutional due-process rights.

At trial, evidence was introduced that Raynor was killed by a .38-caliber bullet that might have been shot from a .357 gun, and that Bush fired this bullet. Trial evidence also established that petitioner, who was convicted as an accomplice to the murder, shot the victim with a .40-caliber handgun. Testimony elicited at trial also described the traffic stop when the guns were confiscated. As an exhibit to the petition, petitioner submits a portion of the trial transcript that concerned the police stop.

As a basis for coram nobis relief, petitioner is unsuccessful in showing that the .357 gun or its history was relevant to petitioner’s defense or was suppressed by the prosecutor. Moreover, petitioner does not establish that any information pertaining to the gun could have provided either favorable, material and exculpatory evidence or impeaching evidence as required to establish a violation of *Brady*. *Sanders v. State, supra*. Further, the evidence relied upon by petitioner in

support of this argument was not extrinsic to the record. *State v. Larimore, supra*. In sum, petitioner does not demonstrate that a writ is warranted based on this argument. *Cloird v. State, supra*.

Due diligence is required in making application for relief, and, in the absence of a valid excuse for delay, the petition will be denied. *State v. Larimore, supra*. Because petitioner has failed 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, we need not reach the issue of whether petitioner exercised due diligence in filing this petition.

Petition denied.