

ARKANSAS SUPREME COURT

No. CR 08-1176

MICHAEL CLARK
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered April 2, 2009

PRO SE MOTION FOR BELATED
BRIEF [CIRCUIT COURT OF
CRITTENDEN COUNTY, CR 88-148,
HON. RALPH WILSON, JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 1988, appellant Michael Clark entered a guilty plea to charges of burglary and theft and received a sentence of ten years' supervised probation. In 2008, appellant filed a petition in the trial court seeking a writ of error coram nobis.¹ The trial court denied the petition and appellant lodged an appeal in this court. Appellant's brief was due on November 17, 2008, and on November 24, 2008, appellant tendered a brief that did not comply with our rules. On December 8, 2008, appellant submitted another brief that failed to comply with Arkansas Supreme Court Rule 4-7, which our clerk refused to file. On December 22, 2008, appellant once again tendered a non-compliant brief. Finally, on January 6, 2009, appellant tendered a brief that appears to comply with our rules of procedure and filed a motion for belated brief.

From a review of the record, it is clear that appellant cannot prevail on appeal. An appeal

¹ In those instances, as here, where the judgment of conviction was entered on a plea of guilty or *nolo contendere*, or the judgment of conviction was not appealed, the petition for writ of error coram nobis is filed directly in the trial court. *See Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Anderson v. State*, 352 Ark. 36, 98 S.W.3d 403 (2003) (per curiam). Accordingly, we dismiss the appeal and the motion is moot.

The standard of review of the denial of a writ of error coram nobis is whether the trial court abused its discretion in denying the writ. *Magby v. State*, 348 Ark. 415, 72 S.W.3d 508 (2002) (per curiam). An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). Here, the trial court did not abuse its discretion to deny the petition.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). 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). A writ of error coram nobis is 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).

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 errors found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, a third-party confession to the crime during the time between conviction and appeal. *Sanders v. State*, 374 Ark. 70, ___ S.W.3d ___ (2008) (per curiam).

The basis upon which appellant sought the writ was his claim that the period of probation to which he was sentenced exceeded the statutory limit in effect. Appellant's claim of error does not fall within one of the recognized categories of error. Nor do we need to consider whether the claimed error is of the requisite fundamental nature, because the facts upon which the error was asserted were not hidden or unknown. The statutes that appellant cites were available at the time of appellant's trial and conviction, and the alleged error could have been addressed at that time. Appellant's petition did not set forth a claim cognizable for error coram nobis relief and the trial court did not err in denying the petition.

Appeal dismissed; motion moot.