ARKANSAS SUPREME COURT

No. CACR 03-488

	Opinion Delivered April 9, 2009
TIMOTHY RAMON MOORE Petitioner v. STATE OF ARKANSAS Respondent	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 2002-1144] PETITION DENIED.

PER CURIAM

In 2002, a jury convicted petitioner Timothy Ramon Moore on charges of kidnapping, aggravated robbery, and theft of property. The Arkansas Court of Appeals affirmed the judgment as modified, reducing the term of the sentence imposed as to aggravated robbery. *Moore v. State*, CACR 03-488 (Ark. App. Jan. 28, 2004). Petitioner has now filed in this court a petition in which he requests that we reinvest jurisdiction in the trial court to consider 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).

Petitioner sets forth two claims in his petition that he asserts as a basis for the writ. Petitioner alleges that the prosecution withheld an amended information that indicated a different victim as to one of the charges and he alleges the prosecution withheld the probable-cause affidavit that was the

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

basis for a search providing evidence used against him. Petitioner contends these actions are violations of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963).

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 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). It is a petitioner's burden to show that the writ is warranted. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004).

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).

Error 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) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (per curiam). We have held that the writ 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).

Petitioner frames his claims as *Brady* violations so as to fall within the third category of error.

There are three elements of a *Brady* violation, as follows: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *Larimore*, 341 Ark. at 404, 17 S.W.3d at 91. As a part of our review of a decision on a petition for writ of error coram nobis that makes such a claim, we determine whether there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the claimed exculpatory evidence been disclosed at trial. *See Larimore*, 341 Ark. at 408, 17 S.W.3d at 94.

Here, the items that petitioner contends were suppressed are not clearly evidence, exculpatory or otherwise. While petitioner contends that the items were suppressed and that he only recently personally became aware of these documents, he has made no showing that the documents, which were public record, were not available to the defense at the time of trial, or would have been available upon the exercise of due diligence. The court is not required to accept at face value the allegations of the petition. *Penn*, 282 Ark. at 574-575, 670 S.W.2d at 428 (citing *Troglin*, 257 Ark. at 645-646, 519 S.W.2d at 741).

Petitioner does not claim that the defense was not aware of the evidence seized through the warrant and the basis for the warrant could have been challenged and addressed at trial. The amended information was contained in the trial record and is not extrinsic to the record. The facts upon which petitioner asserts error were not hidden or unknown. Petitioner's claims do not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis, and we therefore deny the petition.

Petition denied.