

# ARKANSAS SUPREME COURT

No. CR 84-54

TIMOTHY ELLIS McDANIEL  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered April 23, 2009

PRO SE PETITION TO REINVEST  
JURISDICTION IN THE TRIAL  
COURT TO CONSIDER A PETITION  
FOR WRIT OF ERROR CORAM NOBIS  
[CIRCUIT COURT OF GARLAND  
COUNTY, CR 81-135]

PETITION DENIED.

## PER CURIAM

A jury found petitioner Timothy Ellis McDaniel guilty of first-degree murder and sentenced him to life imprisonment. This court affirmed. *McDaniel v. State*, 283 Ark. 352, 676 S.W.2d 732 (1984) (decision subsequent to remand for separate trials in *McDaniel v. State*, 278 Ark. 631, 648 S.W.2d 57 (1983)). Petitioner has now filed a petition in this court in which he requests permission to proceed in the trial court with a petition for writ of error coram nobis.<sup>1</sup> 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 asserts as the basis for reinvesting jurisdiction in the trial court to consider a petition for the writ that he was not given a psychiatric evaluation before trial. Petitioner does not assert that he was not competent, but alleges that the trial court intended for him to be evaluated, but

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<sup>1</sup>For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

that no competency evaluation was done.

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 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). 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).

The fact that petitioner was provided no competency evaluation would not be a fact extrinsic to the record. Because petitioner failed to make the requisite showing in order to demonstrate cause to reinvest jurisdiction in the trial court, we deny the petition.

Petition denied.

Gunter, J., not participating.