

Cite as 2010 Ark. 425

SUPREME COURT OF ARKANSAS

No. CR 95-148

JOSEPH O'NEAL
Petitioner

v.

STATE OF ARKANSAS
Respondent**Opinion Delivered** November 4, 2010PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF CHICOT COUNTY, CR 93-64]

PETITION DISMISSED.

PER CURIAM

Petitioner Joseph O'Neal and Charles McGehee were charged with capital murder in the death of an elderly woman. The state alleged that O'Neal and McGehee killed the victim in the course of and in furtherance of committing robbery, burglary, and rape. O'Neal was tried separately from McGehee and found guilty of first-degree murder, robbery, and burglary. He was sentenced to life imprisonment for murder and twenty years each for robbery and burglary. We affirmed. *O'Neal v. State*, 321 Ark. 626, 907 S.W.2d 116 (1995).

In 2004, petitioner filed a pro se petition asking this court to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. The petition was denied because there were no grounds offered in the petition for issuance of the writ. Instead, petitioner asked that we consider the coram nobis petition that he planned to file in circuit court, a copy of which he had mailed to this court. As this court does not consider trial court

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petitions, the petition to reinvest jurisdiction was denied without prejudice to petitioner's filing within fifteen days a subsequent petition containing the grounds he desired this court to consider. *O'Neal v. State*, CR 95-148 (Ark. Feb. 10, 2005) (unpublished per curiam). Petitioner subsequently filed a second petition, contending that the State and the trial judge vouched for witnesses at trial, that he was not afforded effective assistance of counsel at trial, that the court reporter and trial court made errors with respect to transcription of the trial record such that it was incomplete, that he was not separately charged with burglary and robbery, and that he was subjected to double jeopardy. We denied the petition. *O'Neal v. State*, CR 95-148 (Ark. Apr. 7, 2005) (unpublished per curiam).

Now before us is petitioner's third pro se petition requesting that this court reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.¹ The petition for leave to proceed 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. *Grant v. State*, 2010 Ark. 286 , ___ S.W.3d ___ (per curiam) (citing *Newman v. State*, 2009 Ark. 539, ___ S.W.3d ___); see also *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. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is

¹For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis was assigned the same docket number as the direct appeal of the judgment.

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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 certain errors that 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. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). The function of the writ is to secure relief from a judgment rendered while there existed some fact that would have prevented its rendition if the fact had been known to the circuit court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Grant*, 2010 Ark. 286 (citing *Newman*, 2009 Ark. 539); see also *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam).

As with petitioner's prior petitions, we find no ground to grant the relief sought. Petitioner's sole ground for relief is the repetition of his assertion that the trial court erred in failing to find that there were gaps in the transcription of the trial record. He argues that the gaps, which he does not specify, were sufficient to deprive this court of the ability to make an adequate review of the case on direct appeal. The State urges this court to deny the petition on the ground that petitioner has abused the writ by raising again an issue already considered by this court.

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We agree that petitioner has abused the writ. We have held that a subsequent petition that does not allege new grounds or additional facts to cure the deficiencies in the previous petition is an abuse of the writ and does not support renewal of the application. See *Jackson v. State*, 2009 Ark. 572 (per curiam); see also *Sanders v. State*, 2010 Ark. 139 (per curiam).

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. *Jackson v. State*, 2009 Ark. 572 (per curiam); 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 error 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 in that he alleges no new facts nor any fact sufficient to distinguish his latest claims. The issue raised is the same. He has stated no new fact sufficient to support a cognizable claim of fundamental error.

As noted earlier, 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*, 327

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Ark. 271, 938 S.W.2d 818 (1997). Petitioner's claim does not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis, and we accordingly dismiss the petition as an abuse of the writ.

Petition dismissed.