

Cite as 2011 Ark. 13

**SUPREME COURT OF ARKANSAS**

No. CR 09-387

JIMMY McCOY  
Appellant

v.

STATE OF ARKANSAS  
Appellee**Opinion Delivered** January 20, 2011APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT, CR  
2006-4755, HON. CHRIS PIAZZA,  
JUDGE

AFFIRMED.

**PER CURIAM**

On July 25, 2007, a jury found appellant Jimmy McCoy guilty of charges that included residential burglary, aggravated robbery, and a number of kidnapping counts and imposed an aggregate sentence of 480 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. *McCoy v. State*, CACR 08-122 (Ark. App. Sept. 17, 2008) (unpublished). Between the time appellant filed his notice of appeal and the time the record was lodged on appeal, appellant filed a petition for writ of error coram nobis in the trial court. The court denied that petition, and this appeal followed. We find no abuse of discretion in the denial of the petition and affirm.

The standard of review of a denial of a petition for writ of error coram nobis is whether the circuit court abused its discretion in denying the writ. *Pierce v. State*, 2009 Ark. 606 (per curiam). An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly. *Id.* A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Grant v. State*, 2010 Ark. 286, \_\_\_ S.W.3d \_\_\_ (per curiam).

Cite as 2011 Ark. 13

This exceedingly narrow remedy is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Clark v. State*, 358 Ark. 469, 192 S.W.3d 248 (2004).

This court has previously recognized that a writ of error coram nobis was available to address errors found in 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. *Webb v. State*, 2009 Ark. 550 (per curiam). Appellant alleged error that fell within the last category. Appellant attached affidavits to his petition from two men who were charged with the same crimes and who had entered negotiated pleas in conjunction with the charges. Those affidavits stated that appellant was not involved in the crime. The claim in appellant's petition was that these affidavits represented confessions that were only made available after appellant's trial. Appellant asserts on appeal that, had the jury heard these two confessions, the resulting verdict may have been different.

As was the case in *Clark*, appellant's claim here fails on two bases. We held in *Clark* that the confession of a codefendant convicted of the same crime was not a third-party confession falling within the recognized category of error. *Clark*, 358 Ark. at 480, 192 S.W.3d at 255. Moreover, in order to merit relief, the asserted error must involve previously hidden facts that raise a reasonable probability that the judgment of conviction would not

Cite as 2011 Ark. 13

have been rendered or would have been prevented if available at trial. See *Buckley v. State*, 2010 Ark. 154 (per curiam); *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). The testimony appellant asserts his codefendants would now provide does not rise to that level.

The evidence presented at appellant's trial was that four men with guns came to Kimberly Leggs's house. Three of the men entered the house, tied up all of the adults in the house, and left with Tyson Prosper after beating him and demanding drugs and money. The three men forced Prosper into a waiting car and drove away. When a police car began to follow the car, the driver jumped from the car. The officer following pulled in front of the car, and, when the car crashed into the police car, appellant's two codefendants fled. Prosper was found tied in the back seat of the car.

Prosper identified appellant as one of the men in Leggs's house and as the driver of the car. A woman who had come to Leggs's house either to use the phone or to buy drugs from Prosper<sup>1</sup> identified appellant as one of the men in the house. The police officer who followed the car identified appellant as the driver of the car. Prosper testified that he was acquainted with appellant and that he could identify him despite a scarf that he had wrapped around his face because of a distinctive condition of appellant's eye. One of the detectives on the case testified that appellant's codefendants had initially implicated appellant in the crime.

When a trial court considers a request for the writ based upon a third-party confession, the fact of the confession alone is not ground for relief, and the confession must be

---

<sup>1</sup>Helen Rollins testified that she came to the house to use the phone; Tyson Prosper testified that she came to buy drugs from him.

Cite as 2011 Ark. 13

approached with some skepticism. *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997) (per curiam). The trial court must carefully scrutinize the complete circumstances surrounding the confession and all the available evidence. *Id.* Under the circumstances here, we cannot say that the trial court abused its discretion in finding that the writ should not issue.

Affirmed.