

Cite as 2009 Ark. 117 (unpublished)

ARKANSAS SUPREME COURT

No. CACR 03-862

HOWARD POWELL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 5, 2009

PRO SE PETITION TO REINVEST
JURISDICTION IN CIRCUIT COURT
TO CONSIDER A PETITION FOR
WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF PULASKI
COUNTY, CR 2002-1558]

PETITION DENIED.

PER CURIAM

In 2003, petitioner Howard Powell was found guilty of rape and battery in the second degree and sentenced to an aggregate term of thirty-two years' imprisonment. The Arkansas Court of Appeals affirmed. *Powell v. State*, CACR 03-862 (Ark. App. Sept. 1, 2004). Petitioner subsequently filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1, which was denied. No appeal was taken, and petitioner sought leave from this court to proceed with a belated appeal. The motion was denied. *Powell v. State*, CR 05-758 (Ark. Oct. 13, 2005) (per curiam).

Petitioner now asks that jurisdiction be reinvested in the trial court to consider a petition for writ of error coram nobis in the case.¹ The petition for leave to proceed in the

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



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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. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (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 v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). For the writ to issue following the affirmance of a conviction, the burden is on the petitioner to show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

The petitioner here argues only that he should have been granted leave to proceed with a belated appeal of the order that denied his Rule 37.1 petition. As the petition raises no ground for relief cognizable in a coram nobis proceeding, the petition is denied.²

Petition denied.

of the judgment.

²In a response to the response filed by the State to the petition, petitioner adds that the evidence was insufficient to sustain the judgment in his case and that there was trial court error. Even if we were to consider the claims raised in the response to the response, petitioner has stated no ground to issue a writ of error coram nobis.