

Cite as 2011 Ark. 96

SUPREME COURT OF ARKANSAS

No. CR 00-345

RICHARD COX

Petitioner

v.

STATE OF ARKANSAS

Respondent

Opinion Delivered March 3, 2011

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS AND PRO SE
MOTION FOR PHOTOCOPIES AT
PUBLIC EXPENSE OF
TRANSCRIPTS LODGED IN CACR
98-1408 AND CR 00-345 [CROSS
COUNTY CIRCUIT COURT, CR
96-100]

PETITION AND MOTION DENIED.

PER CURIAM

In 1999, petitioner Richard Cox was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Cox v. State*, 345 Ark. 391, 47 S.W.2d 244 (2001).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. Petitioner has also filed a motion seeking at public expense a copy of the transcript of his trial lodged in CR 00-345 and a copy of the transcript record lodged in CACR 98-1408, which was the appeal from the circuit court's denial of his motion to transfer the proceedings to juvenile court.¹

¹For clerical purposes, the instant petition and motion were assigned the same docket number as the direct appeal of the judgment, CR 00-345.

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With respect to the error coram nobis petition, a 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. *Fudge v. State*, 2010 Ark. 426 (per curiam); *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. *Fudge*, 2010 Ark. 426 (per curiam); *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *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). 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. 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 it 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, ___ S.W.3d ___ (citing *Newman*, 2009 Ark. 539, ___ S.W.3d ___); see also *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam); *Cloird v. State*, 357

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Ark. 446, 182 S.W.3d 477 (2004). The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Webb v. State*, 2009 Ark. 550 (per curiam); *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Barker*, 2010 Ark. 354; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005); *Venn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

Petitioner's sole ground for issuance of the writ is that he was a juvenile at the time of the offense and was only an accomplice to capital murder, making his sentence to life imprisonment without parole a prohibited sentence pursuant to *Graham v. Florida*, 130 S. Ct. 2011 (2010). *Graham* held that the Eighth Amendment prohibits imposition on a juvenile offender who did not commit homicide a sentence of life without parole and that the State must give a juvenile non-homicide offender sentenced to life imprisonment a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.² Petitioner, however, was convicted of a homicide. While he was an accomplice to homicide, there is no distinction between the criminal liability of a principal and an accomplice. A person is criminally liable for the conduct of another person when he is an accomplice of another

²The Court noted that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile non-homicide offender, it does not require the State to release that offender during his natural life. The Eighth Amendment does not foreclose the possibility that some persons convicted of non-homicide crimes, particularly those of an abhorrent nature, committed before adulthood will remain behind bars for life. It does, however, forbid States from making the judgment at the outset that those offenders never will be fit to reenter society. *Graham v. Florida*, 130 S. Ct. at 2030.

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person in the commission of an offense. Ark. Code Ann. § 5-2-402(2) (Repl. 1997). When two or more persons assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of both. *Passley v. State* 323 Ark. 301, 915 S.W.2d 248 (1996). There is no distinction between principals and accomplices where criminal liability is concerned. *Id.*; *Lawshea v. State*, 2009 Ark. 600, ___ S.W.3d ___.

Moreover, petitioner's request to proceed with a petition for writ of error coram nobis must fail because his claim that his sentence violated the Eighth Amendment does not fit with the four categories of relief that are afforded in a writ of error coram nobis. This court has declined to extend the scope of an error coram nobis proceeding to encompass claims under the Eight Amendment. *See, e.g., Coulter v. State*, 365 Ark. 262, 227 S.W.3d 904 (2006) (declining to reinvest jurisdiction in the trial court to consider an Eighth Amendment claim under *Atkins v. Virginia*, 536 U.S. 304 (2002)).

Turning to petitioner's motion seeking a copy of the transcript lodged on direct appeal in his case and the transcript on appeal from the denial of the motion to transfer his case to juvenile court, petitioner has not demonstrated that he is entitled to a copy of either at public expense.

The Freedom of Information Act (FOIA), codified as Arkansas Code Annotated §§ 25-19-101 to -109 (Supp. 2007), which petitioner invokes, does not require a court to provide photocopying at public expense. *Winnett v. State*, 2010 Ark. 346 (per curiam); *Avery v. State*, 2009 Ark. 528 (per curiam) (citing *Moore v. State*, 324 Ark. 921, 921 S.W.2d 606 (1996) (per

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curiam)). This court has further said that indigency alone does not entitle a petitioner to photocopying at public expense. *Evans v. State*, 2009 Ark. 529 (per curiam); *Nooner v. State*, 352 Ark. 481, 101 S.W.3d 834 (2003) (per curiam).

To be entitled to copies at public expense, a petitioner must demonstrate a compelling need for the copies as documentary evidence to support an allegation contained in a timely petition for postconviction relief. *Avery*, 2009 Ark. 528; *Bradshaw v. State*, 372 Ark. 305, 275 S.W.3d 173 (2008) (per curiam). Appellant has cited no postconviction remedy available to him and otherwise made no showing of compelling need. If there is indeed a remedy available, he has not demonstrated that there is any particular issue that he cannot adequately raise to the court without access to the material he seeks. Accordingly, petitioner has failed to show that the material should be provided to him at no cost. *See Hickey v. State*, 2010 Ark. 299 (per curiam); *see also Johnson v. State*, 2010 Ark. 15 (per curiam).

It should be noted that when an appeal has been lodged in either this court or the court of appeals, all material related to the appeal remains permanently on file with our clerk. Persons may review the material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of material related to an appeal may write this court, remit the photocopying fee, and request that the copy be mailed to the prison. *Grant*, 2010 Ark. 286. All persons, including prisoners, must bear the cost of photocopying. *See Carter v. State*, 2010 Ark. 427 (per curiam); *see also Layton v. State*, 2009 Ark. 438; *Giles v. State*, 2009 Ark. 264 (per curiam).

Petition and motion denied.