SLIP OPINION

Cite as 2011 Ark. 203

SUPREME COURT OF ARKANSAS

No. CR 11-211

McKINNLEY WILLIAMS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Deliver May 5, 2011

PRO SE MOTION FOR DUPLICATION OF BRIEF AT PUBLIC EXPENSE [CIRCUIT COURT OF GARLAND COUNTY, CR 2009-307, HON. MARCIA R. HEARNSBERGER, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2009, appellant McKinnley Williams entered a plea of guilty to simultaneous possession of drugs and firearms and was sentenced to 300 months' imprisonment. In 2010, appellant filed in the trial court a petition for writ of error coram nobis, which was denied. He has lodged an appeal in this court from that order. He tendered his brief-in-chief and now seeks to have the brief duplicated at public expense.

As it is clear from the record that appellant could not prevail if the appeal were permitted to go forward, the appeal is dismissed. The motion is moot. This court has held that an appeal from the denial of a petition for writ of error coram nobis will be dismissed if the appeal is without merit. *Pierce v. State*, 2009 Ark. 606 (per curiam).

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A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Thrash v. State*, 2011 Ark. 118 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam); *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. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Rayford v. State*, 2011 Ark. 86 (per curiam); *Barker*, 2010 Ark. 354; *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 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. *Scott v. State,* 2010 Ark. 363 (per curiam); *Grant*, 2010 Ark. 286 (citing *Newman*, 2009 Ark. 539, ___ S.W.3d ___ (per curiam)); *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam).

The sole claim raised by appellant in his petition was that he had acquired "new evidence" in the form of an affidavit from his girlfriend, Lisa Witcher, dated August 23, 2010.

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In the affidavit, which appellant appended to his petition, Witcher attested that the rock cocaine that had been found in appellant's car, which resulted in appellant's being charged with possession of a controlled substance, belonged to her. She averred that she inadvertently left the cocaine in the car while riding with appellant and forgot about it until later that night, at which time she was unable to reach appellant. Witcher further said that she did not know that appellant had been charged with possession of the cocaine until after his arrest, and that she chose not to come forward for fear of being arrested. Appellant did not contend in the petition that the prosecution was aware of Ms. Witcher's alleged role in his arrest.

We find that appellant failed to establish that he was entitled to issuance of the writ. When appellant entered his plea of guilty, that plea was his trial. *Crockett v. State*, 282 Ark. 582, 669 S.W.2d 896 (1984). He did not argue in the error coram nobis petition that force of any kind was exerted to cause him to enter the plea, contending rather than he was left with no choice but to plead guilty because he had no evidence of his innocence. Nevertheless, even if he opted to admit guilt because he considered a plea to be more advantageous to him than pleading not guilty, the fact remains that appellant could have declined to admit his guilt in open court if he was in fact not guilty.

We have held that a claim of newly discovered evidence in itself is not a basis for coram nobis relief. *Scott v. State*, 2010 Ark. 363 (per curiam) (citing *Webb v. State*, 2009 Ark. 550 (per curiam)). Here, appellant elected to enter a plea of guilty when further investigation may or may not have garnered evidence favorable to his defense. An error coram nobis proceeding is

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not an opportunity to vacate an otherwise valid judgment merely because the convicted defendant has located information that could have provided him with a defense to the charge if he had known about it prior to his admission of guilt.

Appeal dismissed; motion moot.