

ARKANSAS SUPREME COURT

No. CACR 04-18

DELARRON KEITH WASHINGTON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 8, 2008

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF UNION COUNTY, CR 2002-487]

PETITION DENIED.

PER CURIAM

In 2003, a jury found petitioner DeLarron Keith Washington guilty of residential burglary, aggravated robbery and first-degree battery and sentenced him to an aggregate term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *Washington v. State*, CACR 04-18 (Ark. App. Oct. 27, 2004). Petitioner now brings a pro se petition in which he requests permission to proceed in the trial court with a petition for writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). 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).

Here, petitioner contends that counsel representing petitioner at trial, Don Gillaspie, was not a licensed attorney, that Mr. Gillaspie's license was suspended at the time of petitioner's trial and petitioner was therefore without counsel and deprived of a fair trial. Petitioner further asserts that the trial court and prosecution were aware of this suspension, although he was not.²

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). While the State contends petitioner's claim does not fall within one of these categories and is not a cognizable claim, petitioner does attempt to argue that his claim falls within the third category because he alleges the information was withheld by the prosecutor.

Even though petitioner does attempt to couch this as a claim of prosecutorial misconduct, his claim is, in effect, a claim that counsel was ineffective because his license was suspended at the time of trial. A claim of ineffective assistance of counsel in itself is not a ground to grant a writ of

² The petition also includes claims asserting petitioner is entitled to a writ of habeas corpus. We do not address those claims because a petition for writ of habeas corpus would be filed directly in the circuit court in the county in which the prisoner is held in custody. *See Lukach v. State*, 369 Ark. 475, ___ S.W.3d ___ (2007) (per curiam).

error coram nobis. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). A claim is not cognizable in a petition for writ of error coram nobis if it may be properly raised in a timely petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 or on direct appeal. *See id.* Petitioner cannot bring his claim of ineffective assistance by asserting the prosecution knew or should have known of the suspension proceedings.

Petitioner has failed to state a claim that is cognizable in an error coram nobis proceeding. We accordingly decline petitioner's request to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

Petition denied.