

SUPREME COURT OF ARKANSAS

No. CR-02-1186

DANNY CROMEANS

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered June 20, 2013

PRO SE PETITIONS TO REINVEST JURISDICTION IN THE CIRCUIT COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS, MOTIONS TO AMEND AND ADD A BRIEF TO PETITION FILED MARCH 20, 2013, AND MOTION FOR APPOINTMENT OF COUNSEL [LAFAYETTE COUNTY CIRCUIT COURT, 37CR-01-1]

PETITIONS DENIED; MOTIONS TO AMEND AND ADD A BRIEF TO PETITION FILED MARCH 20, 2013, DENIED; MOTION FOR APPOINTMENT OF COUNSEL MOOT.

PER CURIAM

In 2002, petitioner Danny Cromeans was found guilty by a jury of kidnapping and rape. He was sentenced to terms of imprisonment of 20 years and life, respectively. We affirmed. *Cromeans v. State*, CR-02-1186 (Ark. May 8, 2003) (unpublished per curiam).

Now before us are two pro se petitions filed by petitioner, each of which seeks to have jurisdiction reinvested in the trial court to consider a petition for writ of error coram nobis.¹ Petitioner has also filed motions to amend and add a brief to the second petition that was filed on March 20, 2013, and a motion for appointment of counsel.

¹The petitions were assigned the docket number for the direct appeal of the judgment of conviction.

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. *Sparks v. State*, 2012 Ark. 464 (per curiam); *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. *Howard v. State*, 2012 Ark. 177, ___ S.W.3d ___. The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *McDaniels v. State*, 2012 Ark. 465 (per curiam). We have held that a writ of error coram nobis is 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. at 580, 583, 986 S.W.2d 407, 409 (1999) (per curiam). 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. *McFerrin v. State*, 2012 Ark. 305 (per curiam); *Cloird v. State*, 2011 Ark. 303 (per curiam); *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Williams v. State*, 2011 Ark. 541 (per curiam). Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Roberts v. State*, 2013 Ark. 56, ___ S.W.3d ___; *Carter v. State*, 2012 Ark. 186 (per curiam); *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

In petitioner's first petition filed March 12, 2013, he contends that he was denied a fair trial because the victim's stepfather was related to the jury foreman. Assuming that petitioner is suggesting bias on the part of the juror, the claim is not cognizable as a ground for a writ of error coram nobis. *Evans v. State*, 2012 Ark. 161 (per curiam). Petitioner could have known at the time of trial about the relationship that he now suggests is an indication of bias on the part of the jury foreman; thus, the issue could have been raised at trial or in a motion for new trial. *See Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). Petitioner has not shown that there was some fundamental flaw in the proceeding against him that warrants granting the writ. *See id.*

In his next claim, petitioner asserts that two of the State's witnesses recanted their testimony after trial, and one of those witnesses was related to the victim's stepfather. The exact nature of the prejudice that petitioner is claiming is not clear. To the extent that the assertion is intended as a claim of recanted testimony, it is well settled that recanted testimony in itself is not a ground for issuance of a writ of error coram nobis. *Anderson v. State*, 2012 Ark. 270, ___ S.W.3d ___ (citing *Jackson v. State*, 2010 Ark. 81 (per curiam)).

In the remainder of the petition, petitioner contends that the writ should issue because his appellate attorney filed a "no merit" brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Petitioner argues that justice is not done when an *Anders* brief is filed on direct appeal of a judgment and that his attorney's filing of an *Anders* brief amounted to ineffective assistance of counsel. Neither allegation is a ground for relief.

Petitioner has not shown that the filing of an *Anders* brief presents an issue that fits within the purview of a coram-nobis proceeding. With respect to the contention that filing such a brief

is tantamount to ineffective assistance of counsel, this court has consistently held that allegations of ineffective assistance of counsel are outside the purview of a coram-nobis proceeding. *McDaniels*, 2012 Ark. 270; *see also Tejada-Acosta v. State*, 2013 Ark. 217, ___ S.W.3d ___.

In the second petition filed March 20, 2013, petitioner urges this court to reinvest jurisdiction in the Lafayette County Circuit Court so that he can raise an issue under *Brady v. Maryland*, 373 U.S. 83 (1963), which prohibits the prosecution from withholding evidence favorable to the accused. He further asserts that he is also entitled to issuance of a writ of habeas corpus because of the *Brady* violation.

As to the allegation that a writ of error coram nobis should be issued, this court has previously recognized that a writ of error coram nobis was available to address errors pertaining to material evidence withheld by the prosecutor, which constitutes a *Brady* violation. *Camp v. State*, 2012 Ark. 226 (per curiam). There are three elements of a *Brady* violation: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *Sanders v. State*, 374 Ark. at 72, 285 S.W.3d at 633. Petitioner has not presented facts to support that a *Brady* violation occurred whether within the scope of a coram-nobis or a habeas proceeding.

Apparently, as a ground for both a writ of error coram nobis and a writ of habeas corpus, petitioner contends that the Lafayette County Circuit Court did not have jurisdiction over his rape charge because the rape did not happen in that county. He states that the victim was kidnapped in Lafayette County and taken to a location in Columbia County. He claims that

he was advised of his rights in both Lafayette County and Columbia County and that Lafayette County had no jurisdiction to take over the charge of rape and try him on an offense that may have occurred outside its jurisdiction.

Petitioner's allegation is founded on an apparent misunderstanding of the law governing the offenses with which he was charged. The victim testified at trial that petitioner kidnapped her from her home in Lafayette County and drove her around both Lafayette and Columbia counties for about six hours. During the journey, petitioner raped the victim in both Lafayette and Columbia counties. Our cases recognize that, when a crime begins in one county and proceeds to culmination in another county, both counties have jurisdiction to prosecute the crime. *Ridling v. State*, 360 Ark. 424, 203 S.W.3d 63 (2005); *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003); *Cozzaglio v. State*, 289 Ark. 33, 709 S.W.2d 70 (1986); see also *Wilson v. State*, 298 Ark. 608, 770 S.W.2d 123 (1989). In *Patterson v. State*, 306 Ark. 385, 815 S.W.2d 377 (1991), this court held that, although the murder occurred in Greene County, Craighead County had jurisdiction to try the appellant because some of the acts requisite to the murder occurred in Craighead County. See also *Pilcher v. State*, 303 Ark. 335, 796 S.W.2d 845 (1990) (holding that both Saline County and Grant County had jurisdiction to try the appellant for murder, where the actual killing occurred in one county, but the acts requisite to the consummation of the murder and the subsequent disposal of the body occurred in the other county). As petitioner kidnapped the victim in Lafayette County, beginning a criminal episode that continued into Columbia County, Lafayette County had jurisdiction to try petitioner. See *Pilcher*, 303 Ark. 335, 796 S.W.2d 845.

Turning to petitioner's motions, the motions to amend and add a brief to the coram-nobis petition filed March 20, 2013, are denied. The requests are based on petitioner's desire to include the claim that a petition for writ of habeas corpus should be issued, and that claim is clearly meritless. As we find no ground to grant to petitioner any of the relief sought in this court, the motion for appointment of counsel filed by petitioner is moot.

Petitions denied; motions to amend and add a brief to petition filed March 20, 2013, denied; motion for appointment of counsel moot.

Danny Cromeans, pro se petitioner.

No response.