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SUPREME COURT OF ARKANSAS

No. CR-12-703

MICHAEL WAYNE GREENE APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** June 6, 2013 PRO SE MOTION TO DUPLICATE AT STATE EXPENSE [PULASKI COUNTY CIRCUIT COURT, CR 01-2783, HON. HERBERT T. WRIGHT, JR., JUDGE] APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

Appellant Michael Wayne Greene lodged in this court an appeal of an order denying his pro se petition for writ of error coram nobis. He has also filed a motion in which he seeks to have copies of his brief-in-chief, which he tendered within the allotted time, duplicated at public expense. We dismiss the appeal; therefore, his motion is moot.

An appeal from an order denying a petition for postconviction relief, including a petition for writ of error coram nobis, will not be permitted to go forward where it is clear that the appellant could not prevail. *Davis v. State*, 2012 Ark. 228 (per curiam). Because two of the issues raised by appellant are not cognizable in a proceeding for a writ of error coram nobis, and because appellant failed to produce a sufficient record on which to consider his other two claims, it is clear that appellant could not prevail on appeal. It is an appellant's duty to bring up a sufficient record to enable this court to consider the issues raised. *Townsend v. State*, 2013 Ark. 106 (per curiam).

Appellant alleged multiple grounds for the writ in his petition. First, he asserted a due-

process violation because the trial court failed to hold a hearing on his competency to stand trial, but also asserted that he was not competent to enter his plea. Appellant next asserted a due-process violation because the court failed to observe the requirement that the proceedings be suspended until a mental evaluation had been completed. Finally, appellant asserted that the report that had been filed following the mental evaluation did not establish his state of mind at the time of the offense. The trial court found that appellant's claims were not diligently filed, that the due-process violations that appellant alleged were not grounds for the writ, that the report filed in response to the order for a mental evaluation reflected that appellant was competent at the time of the offense and competent to stand trial, that no hearing was required, and that appellant had been properly found fit to proceed.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Id.* 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. *Id.*

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Id.* We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the

prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *Id*.

Two of appellant's claims assert alleged procedural defects during appellant's proceedings. However, these two alleged defects, the lack of a hearing and the failure to suspend the proceedings, are not errors falling within one of the four categories of error for which the writ is available. Moreover, these issues are ones that were not hidden or unknown, such that they could not be addressed at the time of the proceedings against appellant. *E.g.*, *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

Appellant's remaining allegations concern his incompetence to enter his plea and that the report filed following his mental evaluation did not establish his capacity at the time of the offense. Appellant conceded in his petition that the report indicated that he "did not lack the capacity to appreciate the criminality of his conduct." And in the order from which he appeals, the trial court found that the report on the mental evaluation stated the examining psychologist's opinion that appellant was legally competent at the time the offense was committed and that appellant was competent to assist in his defense and to stand trial. We would note that these findings indicate a contradiction between the contents of the report and the factual statement in appellant's third claim that there was no evaluation of his capacity at the time of the crime.

In addition, the trial court's order also references a May 3, 2002 hearing in which appellant was found competent to proceed. The trial court cited this hearing in support of its ruling that the court had properly found appellant fit to proceed. In his petition, however,

appellant provided only conclusory allegations that he was incompetent, which were unsupported by any factual basis. While he asserted that he was not able to control his actions or understand the proceedings against him and that he suffered from a number of conditions that caused him to commit the crime and impaired his cognitive function, no facts were set forth in the petition to support his self-serving statements or that would have contradicted the expert opinion, which the trial court found was contained in the filed report.

Notwithstanding the foregoing, the report relied on by the trial court in its order is not included in the record before us, nor is the transcript of the May 3, 2002 hearing. Appellant has not filed a motion for writ of certiorari that requests either the report or the hearing transcript referenced in the trial court's order be brought up.[1] A petitioner who seeks relief in this court has the burden to bring up a sufficient record upon which to grant relief. *Jackson v. State*, 2012 Ark. 41 (per curiam). It is well settled that an appellant bears the burden of producing a record demonstrating error. *Id*. Without the report or the transcript of the hearing, this court is unable to conduct an adequate review. Therefore, appellant could not prevail on appeal, and we dismiss it. *Johnson v. State*, 2011 Ark. 455 (per curiam). Because we dismiss the appeal, appellant's motion to duplicate is moot.

Appeal dismissed; motion moot.

Michael Wayne Greene, pro se appellant.
No response.

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[1]Pro se litigants are held to the same standards as licensed attorneys with respect to producing a record sufficient to show error. *See Brown v. Gibson*, 2012 Ark. 285, ___ S.W.3d ___ (per curiam); *see also Lucas v. Jones*, 2012 Ark. 365, ___ S.W.3d ___. A pro se appellant receives no special consideration on appeal. *McDaniel v. Hobbs*, 2013 Ark. 107 (per curiam).