Cite as 2012 Ark. 136

SUPREME COURT OF ARKANSAS

No. CR 02-1150

ROBERT HOOVER PETITIONER v. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered** March 29, 2012 PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [DREW COUNTY CIRCUIT COURT, CR 2001-07] PETITION DENIED.

PER CURIAM

Robert Hoover, the petitioner, requests that this court reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. Petitioner seeks relief from a judgment reflecting two life sentences on his convictions for capital murder in the death of James Wesley Masters and aggravated robbery. Petitioner states no valid basis for the writ, and we deny the petition.

Petitioner sets out three bases for the writ in the petition: (1) the prosecution withheld evidence of a deal with his codefendant; (2) the prosecution wrote the judge in his case and interfered with an ordered mental evaluation; (3) the sentence imposed violated double jeopardy, and the State failed to prove the charge of aggravated robbery. Only one of the three claims is of the ilk that may be cognizable in proceedings for the writ, and that claim is without merit.

Petitioner correctly seeks leave from this court in order to file a petition in the circuit court. The petition in this 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 this court

grants permission. *Cox v. State*, 2011 Ark. 96 (per curiam). Petitioner's judgment was affirmed on appeal. *Hoover v. State*, 353 Ark. 424, 108 S.W.3d 618 (2003).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Williams v. State*, 2011 Ark. 541 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Coley v. State*, 2011 Ark. 540 (per curiam). The remedy is exceedingly narrow and appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Hogue v. State*, 2011 Ark. 496 (per curiam); *McCoy v. State*, 2011 Ark. 13 (per curiam). Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Biggs v. State*, 2011 Ark. 304 (per curiam).

To warrant a writ of error coram nobis, a petitioner has the burden of bringing forth some fact, extrinsic to the record, that was not known at the time of trial. *Martin v. State*, 2012 Ark. 44 (per curiam). This court has previously recognized that a writ of error coram nobis was available to address errors found in 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. *Webb v. State*, 2009 Ark. 550 (per curiam). Only the first basis that petitioner asserts in the petition falls within one of the previously recognized categories; that claim alleged that the prosecution had withheld evidence of petitioner's codefendant's deal.

In order for a claim to merit relief, the asserted error must involve previously hidden facts that raise a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, if those facts had been available at trial. *Williams*, 2011 541; *Hogue*, 2011 Ark. 496; *Biggs*, 2011 Ark. 304; *Sanders v. State*, 2011 Ark. 199 (per curiam); *see also Buckley v. State*, 2010 Ark. 154 (per curiam); *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). The facts that petitioner alleges were withheld—information concerning a deal struck by the prosecution with petitioner's then-girlfriend, who was also involved in the crime—would not have provided evidence that might have been effective for impeachment purposes or used in petitioner's trial defense. Petitioner does not assert that the information would have been used for such a purpose, and petitioner's codefendant did not testify at petitioner's trial.

Instead, petitioner contends that, if his codefendant was offered a deal with a lesser sentence than the one that he received, then he should also have been offered a matching plea agreement. Petitioner, however, offers no authority or persuasive argument to support his position that the prosecution was required under those circumstances to offer him any plea agreement. Where it is not apparent without further research that the argument is well taken, we have made it clear that we will not address those arguments that are presented without citation to authority or convincing argument. *Pinder v. State*, 2012 Ark. 45 (per curiam); *Butler v. State*, 2011 Ark. 435, ___ S.W.3d ___ (per curiam); *Nelson v. State*, 2011 Ark. 429, ___ S.W.3d ___; *Boivin v. Hobbs*, 2011 Ark. 384 (per curiam); *Whiteside v. State*, 2011 Ark. 371, ___ S.W.3d ___; *Moore v. State*, 2011 Ark. 269 (per curiam); *Sweet v. State*, 2011 Ark. 20, ___ S.W.3d ___; *McCraney v. State*, 2010 Ark. 96, ___ S.W.3d ___; *Britt v. State*, 2009 Ark. 569, 349 S.W.3d 290

(per curiam); *Strong v. State*, 374 Ark. 404, 277 S.W.3d 159 (2008).

More importantly, even assuming that petitioner's allegations had any merit and a plea offer would have been required, there would nevertheless have been a judgment against petitioner for the crimes, albeit on a guilty plea. Petitioner failed to demonstrate that the allegedly withheld evidence would have had any effect upon his trial or that the judgment in this case would not have been rendered or would have been prevented if the facts had been known.

The two remaining claims—those allegations about the prosecutor's letter referencing the mental evaluations and the allegations that the sentences violated double jeopardy and the aggravated-robbery charge was not supported by sufficient evidence—arise from facts that were known at trial and not hidden. The challenges that petitioner makes could have been made at trial or on appeal, and the facts upon which the claims are based are not extrinsic to the record.

The letter concerning the mental evaluations that petitioner points to indicated that trial counsel had been copied. Moreover, there was discussion on the record about the orders that were given for petitioner's mental evaluations, including similar comments by the prosecution. There was discussion of the court's decision to rescind its last order for an additional evaluation following two evaluations that had recommended that petitioner was competent to be tried.[1] The facts forming the basis for this claim were not extrinsic to the record.

Double jeopardy claims do not fall within one of the four categories of recognized

[1]The trial court ordered the third evaluation of petitioner based on a desire for further evaluation, in the event that petitioner entered a guilty plea. The State, at one point, had offered to allow petitioner to enter a guilty plea, but the proposed deal would have required jury sentencing and did not include waiver of the death penalty. The trial court apparently believed that some different standard of competency might apply under those circumstances, but rescinded its order for evaluation when the State withdrew the offer.

claims, and petitioner has not provided a demonstration of any error concerning facts that were not known at the time of trial or that were not included in the record pertaining to that claim. *See Mills v. State*, 2009 Ark. 428 (per curiam); *Williams v. State*, 289 Ark. 385, 711 S.W.2d 479 (1986) (per curiam). Whether evidence was sufficient to sustain a judgment is an issue of trial error and not an issue cognizable in an error-coram-nobis proceeding. *Butler v. State*, 2011 Ark. 542 (per curiam). Extraordinary relief is simply not a substitute for appeal. *Fudge v. State*, 2010 Ark. 426 (per curiam).

This court will grant permission for a petitioner to proceed with a petition for writ of error coram nobis only when it appears that the proposed attack on the judgment is meritorious. *Hogue*, 2011 Ark. 496. It is a petitioner's burden to show that the writ is warranted. *Cater v. State*, 2011 Ark. 481 (per curiam). Petitioner has failed to meet that burden, and we accordingly deny the petition.

Petition denied.