

Cite as 2012 Ark. 193

SUPREME COURT OF ARKANSAS

No. CR 04-534

CHARLES GENTRY RODGERS
PETITIONER

v.

STATE OF ARKANSAS
RESPONDENT**Opinion Delivered** May 3, 2012PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
AND MOTIONS TO SUPPLEMENT
AND TO AMEND PETITION
[PHILLIPS COUNTY CIRCUIT COURT,
CR 2002-171]MOTIONS DENIED; PETITION
DENIED.**PER CURIAM**

This court affirmed a judgment reflecting petitioner Charles Gentry Rodgers's conviction and life sentence for rape. *Rodgers v. State*, 360 Ark. 24, 199 S.W.3d 625 (2004). Petitioner has filed a petition in this court that seeks to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis and two motions that seek to supplement and amend that request with a substituted petition or additional documents.¹ Because the State had filed its response prior to the motions to supplement and amend, and because petitioner's proposed additions and amendments would not further his application for relief,² we deny the requests to

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

²Petitioner's proposed changes would add claims that are of the same type as those presented in the petition. The proposed claims assert trial error based on facts that are contained in the record or would have been known to petitioner at the time of trial.

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supplement and amend the petition . Because petitioner has stated no basis to warrant issuance of the writ, we deny the petition to reinvest jurisdiction in the trial court.

A prisoner who has appealed his judgment and who wishes to attack his conviction reflected in that judgment by means of a petition for writ of error coram nobis must first request that this court reinvest jurisdiction in the trial court. *Martin v. State*, 2012 Ark. 44 (per curiam) (citing *Kelly v. State*, 2010 Ark. 180 (per curiam)). A 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).

It is a petitioner's burden to show that the writ is warranted. *Scott v. State*, 2009 Ark. 437 (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 v. State*, 2011 Ark. 496 (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*, 2012 Ark. 44.

Petitioner makes a number of claims in support of his request to proceed for the writ, all of which appear to concern allegedly false statements made by the prosecution about certain continuances and a mental-evaluation report. The allegedly false statements relate to a claimed speedy-trial violation. Petitioner also alleges ineffective assistance of counsel in regard to the speedy-trial violation. Petitioner fails to identify any facts that were not contained within the record in support of these claims, and, in fact, petitioner points directly to the trial record to

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support his allegations that the prosecution's statements were false.

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*, 2011 Ark. 496. This court has previously recognized that a writ of error coram nobis was available to address errors found in only 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).

Petitioner attempts to frame his claims to fall within the third category by alleging prosecutorial misconduct. The claims, however, assert trial error rather than some material evidence that was withheld. The facts or information forming the basis for each claim were contained in the record and were not hidden or withheld.³ Issues of trial error, even those of

³There are some discrepancies between what petitioner appears to assert is contained in the record and what does appear in the record. For example, petitioner states that certain continuances appear on the docket that are not listed. Nevertheless, the docket, orders, and other documents referenced that form the basis for petitioner's claim are all a part of the record, whether petitioner has accurately portrayed those documents or not.

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constitutional dimension, could have been raised at trial or in some other legal proceeding and are not cognizable in a coram-nobis proceeding. *Martin*, 2012 Ark. 44. This court has consistently held that claims of ineffective assistance of counsel are outside the purview of a coram-nobis proceeding. *Id.* None of petitioner's claims is cognizable in a proceeding for the writ.

Petitioner has not met his burden to state some basis that would warrant a proceeding for the writ. We accordingly decline the request to reinvest jurisdiction in the trial court for further proceedings.

Motions denied; petition denied.