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SUPREME COURT OF ARKANSAS

No. CR 07-1318

ROBERT MAXWELL a/k/a G-DOFFEE PETITIONER v. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered** May 31, 2012 PRO SE PETITION TO REINVEST CIRCUIT COURT WITH JURISDICTION TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS; MOTION FOR WRIT OF CERTIORARI; AND MOTION TO RECALL THE MANDATE [PULASKI COUNTY CIRCUIT COURT, CR 06-2198, HON. JOHN LANGSTON, JUDGE] PETITION DENIED; MOTION FOR WRIT OF CERTIORARI DENIED; MOTION TO RECALL THE MANDATE DENIED.

PER CURIAM

Petitioner, Robert Maxwell, who is also known as G-Doffee, was found guilty by a Pulaski County jury of one count of first-degree discharge of a firearm from a vehicle and four counts of second-degree discharge of a firearm from a vehicle, and he was sentenced as a habitual offender to an aggregate term of life imprisonment plus fifteen years. We affirmed. *Maxwell v. State*, 373 Ark. 553, 285 S.W.3d 195 (2008). Petitioner then filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2008), which was denied. We dismissed his appeal of that matter, as his petition was not timely filed. *Maxwell v. State*, 2009 Ark. 125 (unpublished per curiam).

Subsequently, petitioner sought leave of this court to pursue a petition for writ of error coram nobis in the circuit court, and we denied his petition. *Maxwell v. State*, 2009 Ark. 309

(unpublished per curiam). We also denied his motion for reconsideration of that decision. *Maxwell v. State*, 2009 Ark. 551 (per curiam). Now before us is petitioner's second petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] Because petitioner has failed to show that the writ is warranted, the petition is denied.

A prisoner who appealed his judgment and who wishes to attack his conviction by means of a petition for writ of error coram nobis must first request that this court reinvest jurisdiction in the trial court. *Kelly v. State*, 2010 Ark. 180 (per curiam). The filing of the transcript in an appellate court deprives a trial court of jurisdiction. *See Sherman v. State*, 326 Ark. 153, 931 S.W.2d 417 (1996); *see also Watkins v. State*, 2010 Ark. 156, __ S.W.3d __ (per curiam) (applying the same rule to a petition under Arkansas Rule of Criminal Procedure 37.1 (2010)). Thus, a petition to reinvest jurisdiction is necessary after the transcript is lodged on appeal because a circuit court can only entertain a petition for writ of error coram nobis after this court grants permission. *See generally Kelly*, 2010 Ark. 180 (citing *Mills v. State*, 2009 Ark. 463 (per curiam)).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Whitham v. State*, 2011 Ark. 28 (per curiam); *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam). This exceedingly narrow remedy is 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. *McCoy v. State*, 2011 Ark. 13 (per curiam) (citing *Clark v. State*, 358 Ark. 469, 192 S.W.3d 248 (2004)). This court will grant permission for a petitioner to proceed in the trial court

[1]For clerical purposes, the instant motion was assigned the same docket number as petitioner's direct appeal.

with a petition for writ of error coram nobis only when it appears the proposed attack on the judgment is meritorious. *Whitham*, 2011 Ark. 28; *Buckley v. State*, 2010 Ark. 154 (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 has 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. *Gardner v. State*, 2011 Ark. 27 (per curiam); *Webb v. State*, 2009 Ark. 550 (per curiam). Though he attempts to frame the issue as one of withheld evidence of his incompetency, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), petitioner's claim is more properly addressed as a claim of insanity at the time of trial.

Petitioner's bases his claim on allegations that he "had some mental health history issues";[2] that the conditions of his incarceration prior to trial exacerbated these mental-health issues; and that the sexual assault of, and miscarriage by, petitioner's girlfriend/co-defendant while in jail awaiting trial caused petitioner great mental distress, all of which petitioner claims rendered him incapable of aiding in his defense at trial. Petitioner raised essentially the same claim in his previous petition to reinvest jurisdiction in the trial court. Addressing that claim,

[2]The alleged issues were that (1) petitioner's mother was schizophrenic and had been hospitalized at the Arkansas State Hospital for that reason; (2) petitioner's mother's history of drug and alcohol abuse created a dysfunctional "home upbringing" for petitioner; (3) petitioner was prescribed mental-health medications at various times prior to his arrest, and he was hospitalized for treatment on three different occasions; (4) petitioner had attempted suicide in the past; (5) petitioner had a history of drug and alcohol abuse; (6) petitioner had been without access to mental-health treatment for long stretches of his life.

we stated:

> Apart from the accusations set out by petitioner, no evidence supports his insanity claim. Prior to trial, petitioner was ordered to undergo a mental health evaluation. The examining psychologist's only diagnosis was that petitioner was malingering. The report also ruled out any type of mental disease or defect that would have prevented petitioner from understanding the proceedings against him or assisting in his own defense. Petitioner provides no factual basis to warrant relief on this point.

Maxwell, 2009 Ark. 309, at 6–7.

In his instant petition, petitioner attempts to overcome the lack of a factual basis for his claim by presenting a variety of documents, including a grievance form filed by codefendant Princess Smith while in the Pulaski County Jail, an official memorandum from jail personnel regarding Ms. Smith's grievance, the recommended disposition of a claim that petitioner raised in federal court, a copy of this court's 2009 Ark. 309 opinion, two grievances that petitioner filed in the Pulaski County Jail, two appeals of the jail's disposition of the grievances, two reports that explained the jail's denial of petitioner's grievances and appeals, two pages of transcripted testimony from petitioner's sentencing, and a 2011 deposition of Ms. Smith. None of the documents, however, lend support to petitioner's claim of insanity at the time of trial.

For example, Ms. Smith's grievances and the dispositions thereof, the disposition of the federal claim, the testimony, and Ms. Smith's deposition all concern the allegation that Ms. Smith was sexually assaulted by a Pulaski County Deputy, but no explanation is given for how this sexual assault, if proven, rendered petitioner incompetent to stand trial. He merely states that the stress from this incident caused him to be delusional and "mentally unaware of what was taking place around" him during trial. Such a claim was already addressed by this court in our

decision on his previous petition when we noted that his allegations of insanity included reference to Ms. Smith's miscarriage, physical and sexual abuse of Ms. Smith by jail staff, and nightmares that petitioner suffered as a result. *Maxwell*, 2009 Ark. 309. As we stated in that decision, the alleged attack on Ms. Smith did not establish that petitioner was incompetent at trial, especially in light of the fact that he received a mental evaluation prior to trial and was found fit to proceed. *See id.* The fact that petitioner has attempted in the instant petition to establish that the attack occurred and that he was upset about it does not change this analysis. Petitioner has again failed to establish that the allegations contained in his petition are meritorious or are grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis.

As mentioned, petitioner attempts to couch his entire claim in terms of a withheld-evidence violation under *Brady*, arguing that the State's failure to look beyond the report from the Arkansas State Hospital to determine whether petitioner was competent is somehow analogous to a *Brady* violation. Such an argument is unavailing; while the withholding by the prosecution of material evidence is a ground for the writ pursuant to *Brady*, the evidence contemplated in *Brady* is "evidence material either to guilt or punishment." *Evans v. State*, 2012 Ark. 161, at 4 (per curiam) (quoting *Brady*, 373 U.S. at 87). The claim asserted by petitioner falls well outside the scope of *Brady*.

In the alternative, petitioner asks this court to issue a writ of certiorari to supplement the record with a mental-health evaluation dated February 16, 2010. Because we find that the petition to reinvest jurisdiction is without merit, and because petitioner does not identify any

other ongoing legal proceeding in which the record would need to be supplemented, this alternative motion for cetiorari is moot. *See generally Watson v. State*, 2012 Ark. 27 (per curiam) (holding that motion for writ of certiorari was moot when underlying appeal was dismissed).

Finally, we note that part of petitioner's brief in support of his petition to reinvest jurisdiction seems to argue that this court should recall its mandate so that petitioner could pursue a second petition for postconviction relief under Rule 37.1. He cites *Robbins v. State*, 353 Ark. 556, 114 S.W.3d 217 (2003) in support of his argument, arguing that his case "more so than not" meets the three factors for recalling the mandate that we laid out in *Robbins*. Yet *Robbins* is explicit in its holding that it applies only in cases where the death penalty has been imposed. *Id.* Nor did petitioner satisfy the other two requirements of *Robbins*: he presented no case that was on all fours legally with his case, and he did not demonstrate that his federal habeas-corpus petition was denied due to unexhausted state claims. *Id.* Thus, his motion to recall the mandate is denied.

Petition denied; motion for writ of certiorari denied; motion to recall the mandate denied.