Cite as 2012 Ark. 393

SUPREME COURT OF ARKANSAS

No. CR 07-738

	Opinion Delivered October 11, 2012
FERNANDO RODRIGUEZ PETITIONER V. STATE OF ARKANSAS RESPONDENT	PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [BENTON COUNTY CIRCUIT COURT, CR-05-939] PETITION DENIED.

PER CURIAM

In 2006, petitioner Fernando Rodriguez was found guilty by a jury of murder in the first degree in the stabbing death of Gabino Mendoza. He was sentenced to life imprisonment. Petitioner appealed from the judgment, and this court affirmed. *Rodriguez v. State*, 372 Ark. 335, 276 S.W.3d 208 (2008).

The evidence against petitioner was substantial. The prosecution presented the testimony of a neighbor and three family members that there was a fight between petitioner and the victim that resulted in the victim's lying bloody on the ground. The defense presented testimony of other relatives who had witnessed the fight, and petitioner himself took the stand and admitted that he fought with the victim, that he had something in his hand during the fight, and that the altercation ended with the victim bleeding on the ground.

After the judgment was affirmed on direct appeal, petitioner filed in the trial court a

timely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2008). The trial court denied the petition, and we affirmed. *Rodriguez v. State*, 2010 Ark. 78 (per curiam).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] 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. *McFerrin v. State*, 2012 Ark. 305 (per curiam); *Williams v. State*, 2011 Ark. 541 (per curiam); *Pinder v. State*, 2011 Ark. 401 (per curiam); *Dickerson v. State*, 2011 Ark. 247 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam); *Fudge v. State*, 2010 Ark. 426; *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 849 (per curiam) (citing *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61); *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. *Anderson v. State*, 2012 Ark. 270, ___ S.W.3d ___ (per curiam); *Coley v. State*, 2011 Ark. 540 (per curiam); *Pinder*, 2011 Ark. 401; *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Fudge*, 2010 Ark. 426; *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Coley*, 2011 Ark. 540 (citing *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam)). We have held that a writ of error coram

[1]The petition was assigned the docket number for the direct appeal of the judgment of conviction, CR-07-738.

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*, 336 Ark. at 583, 986 S.W.2d at 409. 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*, 2012 Ark. 305; *Coley*, 2011 Ark. 540; *Pinder*, 2011 Ark. 401; *Cloird v. State*, 2011 Ark. 303 (per curiam); *Smith v. State*, 2011 Ark. 306 (per curiam); *Biggs v. State*, 2011 Ark. 304 (per curiam); *Grant*, 2010 Ark. 286, 365 S.W.3d 849; *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (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*, 2011 Ark. 541; *Pinder*, 2011 Ark. 401; *Webb v. State*, 2009 Ark. 550 (per curiam); *Sanders*, 374 Ark. 70, 285 S.W.3d 630. Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Carter v. State*, 2012 Ark. 186 (per curiam); *Coley*, 2011 Ark. 540; *Cloird*, 2011 Ark. 303; *Smith*, 2011 Ark. 306; *Gardner v. State*, 2011 Ark. 27 (per curiam); *Barker*, 2010 Ark. 354, ___ S.W.3d ___; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005); *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)).

Petitioner first contends that the prosecution violated his right to due process of law by coercing three persons into making false statements and that the three later provided

affidavits attesting to the coercion. He states that the affidavits were before the trial court, but the trial court made no mention of the weight that the court gave the affidavits and that it appears that the court "simply dismissed the affidavits out of hand." Petitioner argues that the testimony of the three witnesses was false, as demonstrated by the affidavits, which were "summarily rejected" by the trial court. Petitioner asserts that his attorney at trial knew that the testimony was false, suggesting that counsel should have prevented the statements and testimony from being used by the prosecution.

Petitioner's claims do not state a basis for the writ. Mere trial error is not a ground for granting a writ of error coram nobis. An issue that was known at the time of trial and was addressed, or could have been addressed, is not one cognizable in an error-coram-nobis proceeding. *Anderson v. State*, 2012 Ark. 270, ___ S.W.3d ___ (per curiam). This applies even to issues of trial error of constitutional dimension that could have been raised in the trial court. *Rodgers v. State*, 2012 Ark. 193 (per curiam); *Martin v. State*, 2012 Ark. 44 (per curiam). By petitioner admissions, all the assertions made by him concerning the three witnesses and their statements and testimony were known at the time of trial and could have been addressed at that time. Petitioner has not shown that there was any information extrinsic to the record that, even if it had been known at the time of trial, would somehow have created an issue sufficient to call into question the outcome of the trial. He has fallen far short of establishing that there is a ground to issue a writ of error coram nobis.

To the extent that petitioner may have intended his claims to be an attack on the sufficiency of the evidence, such issues are not cognizable in coram-nobis proceedings. *Butler*

v. State, 2011 Ark. 542 (per curiam). The sufficiency of the evidence and credibility of witnesses are matters to be addressed at trial. *See Martin*, 2012 Ark. 44; *see also Cooper v. State*, 2012 Ark. 471 (per curiam); *Grant*, 2010 Ark. 286; *Flanagan v. State*, 2010 Ark. 140 (per curiam).

Finally, petitioner alleges directly that his attorney did not afford him the effective assistance of counsel to which he was entitled. The allegation is not a basis for the writ. This court has consistently held that allegations of ineffective assistance of counsel are outside the purview of a coram-nobis proceeding. *Rodgers*, 2012 Ark. 193; *Martin*, 2012 Ark. 44; *Butler*, 2011 Ark. 542; *Benton v. State*, 2011 Ark. 211 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam); *Scott v. State*, 2009 Ark. 437 (per curiam); *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (per curiam).

Petition denied.

Fernando Rodriguez, pro se appellant.

No response.