

# ARKANSAS SUPREME COURT

No. CR 07-788

CLEMONT A. SANDERS  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      November 13, 2008

PRO SE APPEAL FROM THE CIRCUIT  
COURT OF CRITTENDEN COUNTY,  
CR 2005-336, CR 2005-423, CR 2005-  
684, HON. DAVID N. LASER, JUDGE

AFFIRMED.

## PER CURIAM

In 2005, appellant Clemont A. Sanders simultaneously entered a plea of guilty in each of three criminal matters. He was sentenced to 180 months' imprisonment for aggravated robbery, followed by 120 months' suspended imposition of sentence for each of two counts of theft of property by receiving. The theft-of-property sentences were to run concurrently with each other and consecutively to the sentence for aggravated robbery. In addition, a judgment for restitution in the amount of \$500 was entered against appellant.

In 2007, appellant filed in the trial court a pro se petition for a writ of error coram nobis in which he sought a new trial or resentencing. The trial court denied the petition without a hearing, and appellant has lodged a pro se appeal here from that order.

Where a judgment of conviction was entered on a plea of guilty or nolo contendere, or the judgment of conviction was not appealed, a petition for writ of error coram nobis is filed directly in the trial court. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). Denial of a coram nobis petition is reviewed by appeal. *Magby v. State*, 348 Ark. 415, 72 S.W.3d 508 (2002)

(per curiam). Denial of coram nobis relief is reviewed under an abuse of discretion standard. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). An abuse of discretion occurs when the circuit court acts arbitrarily or groundlessly. *Id.*

On appeal, appellant's arguments can be summarized as follows: (1) The trial court failed to conduct an evidentiary hearing on the coram nobis petition or make written findings of facts and conclusions of law; (2) The trial court imposed invalid sentences; and (3) The prosecutor gave false testimony and withheld material evidence.<sup>1</sup> A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *State v. Larimore*, 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. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). Issuance of a writ may be 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, supra*.

For the writ to issue, appellant must show a fundamental error of fact extrinsic to the record. *See Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error coram nobis 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. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997).

Appellant first argues on appeal that the trial court failed to conduct an evidentiary hearing

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<sup>1</sup>In the petition filed in the trial court, appellant also claimed that his guilty plea was coerced by trial counsel. He did not raise this issue on appeal, and claims that are raised below but not argued on appeal are considered abandoned. *State v. Grisby*, 370 Ark. 66, 257 S.W.3d 104 (2007).

on appellant's petition. He also complains that the trial court failed to make written findings of facts and conclusions of law that specified the parts of the record forming the basis of its order. For support, appellant relies upon portions of Arkansas Rule of Criminal Procedure 37.3. Rule 37.3 is applicable only to petitions for postconviction relief under Criminal Procedure Rule 37.1, and does not apply to coram nobis petitions. Appellant fails to cite any valid authority in support of these arguments, and they will not be considered here. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

Next, appellant contends that the sentences imposed by the trial court were invalid. He cites *Blakely v. Washington*, 542 U.S. 296 (2004), for the proposition that a jury should have sentenced him rather than the trial court. He also asserts that the sentences were improperly imposed under Arkansas Code Annotated § 16-90-803 (Supp. 2003). Without commenting on the applicability of *Blakely* or the statute, sentencing issues do not present one of the four enumerated categories for which coram nobis relief will lie. *See Coulter v. State*, 365 Ark. 262, 227 S.W.3d 904 (2006). As appellant's sentencing claim is not cognizable in a petition for writ of error coram nobis, it does not present a legitimate foundation for consideration in this matter.

In the last point on appeal, appellant urges this court to find that the prosecutor made a "false proffer" during the guilty plea hearing and withheld material evidence at that time. In support of these contentions, appellant references the guilty plea hearing, the police incident report and arrest report, and statements made by witnesses and appellant to the police.

Appellant's charge that the prosecutor made a "false proffer" is not one of the four limited bases for coram nobis claims, although material evidence being withheld by the prosecutor is. *Pitts v. State, supra*. Nevertheless, the hearing transcripts, police reports and statements given to the

police cited as evidence by appellant were not extrinsic to the record below, hidden from appellant or counsel, or otherwise unknown. *Echols v. State, supra; Larimore v. State, supra*. Even if such evidence supported a coram nobis claim, the record on appeal does not contain any of these items. The party asserting error has the burden to produce a record sufficient to demonstrate prejudicial error, and this court does not consider evidence not included in the record on appeal. *Smith v. State*, 343 Ark. 552, 39 S.W.3d 739 (2001).

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird v. State, supra*. Here, appellant has failed to make a showing that the allegations contained in his petition or on appeal were meritorious and warranted issuance of a writ of error coram nobis. As no substantive basis existed for granting the petition, we need not reach the issue of whether appellant exercised due diligence in proceeding for the writ. The trial court did not abuse its discretion in denying the writ and its decision is affirmed.

Affirmed.