

SUPREME COURT OF ARKANSAS

No. CR 09-788

ROBERT D. LOGGINS

PETITIONER

v.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered March 1, 2012

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[UNION COUNTY CIRCUIT COURT,
CR 2008-478]

PETITION DENIED.

PER CURIAM

In 2008, Robert D. Loggins was found guilty by a jury of two counts of possession of a controlled substance with intent to deliver and one count each of simultaneous possession of drugs and firearms, possession of drug paraphernalia, and maintaining drug premises. He was sentenced to serve an aggregate term of life imprisonment plus 1344 months. Fines totaling \$70,000 were also imposed. We affirmed. *Loggins v. State*, 2010 Ark. 414, ___ S.W.3d ___.

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. *Williams v. State*, 2011 Ark. 541 (per curiam); *Pinder v. State*, 2011 Ark. 401 (per curiam); *Dickerson v. State*, 2011

¹The petition was assigned the docket number for the direct appeal of the judgment of conviction, CR 09-788.

Ark. 247 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam); *Fudge v. State*, 2010 Ark. 426; *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam) (citing *Newman v. State*, 2009 Ark. 539, ___ S.W.3d ___); *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. *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 nobis was 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. *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, ___ S.W.3d ___; 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. *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); *Venn 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's sole ground for issuance of the writ is the claim that a third-party confession has become available to him that establishes information that was not available at trial, which, combined with evidence adduced at trial, would have resulted in a reasonable probability that the judgment would not have been rendered if the information had been brought out at trial. The alleged information would have come from three persons, each of whom has provided an affidavit attesting to the information: Michael Hunter, Markesia Faison, and Rolonda Loggins.

In his affidavit, Hunter avers that he was with Rolonda Loggins the day Rolanda rented the house, he was the operator of the drug-and-gambling house, that he had just left the house before it was raided, and that he had hidden some drugs and a firearm before he left the house. Markesia Faison states in her affidavit that the house was Hunter's drug-and-gambling house, that she was present when the house was raided, that Hunter was absent on an errand when the raid occurred, and that she told Hunter after the raid that the police had taken his drugs and guns. In her affidavit, Rolonda Loggins states that Hunter asked her to rent the house for him to use to "chill out," that he gave her the money to rent the house, and that she later learned that Hunter was dealing drugs and running a gambling operation in the house.

The petition for writ of error coram nobis is denied. First, the affidavits do not exonerate petitioner. Petitioner was tried with his co-defendant Benjamin Carter. We need not reiterate

the evidence noted in our opinion on direct appeal, which proved that petitioner and Carter were in possession of money that came from a government informant who had purchased drugs at the house and that there was ample testimony from persons with direct knowledge of petitioner's and Carter's selling drugs from the house and having control over drugs and firearms in the house. The information contained in the affidavits does not negate the evidence adduced at trial.

More importantly, even if it could be said that the affidavits establish that Hunter was the proprietor of the house, it is well settled that the mere fact that another person has confessed to a crime cannot, alone, be grounds for coram-nobis relief. *Coley*, 2011 Ark. 540 (citing *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997)); see also *Jackson v. State*, 2010 Ark. 81 (per curiam). Coram-nobis proceedings require that the claim of a third-party confession be raised before affirmance of the judgment, at a time when recollections are fresh and reliable evidence is available, so that the trial court can take evidence and fairly determine whether the confession is based on fact. *Id.* Assertions of a third-party confession after a judgment is affirmed are properly addressed to the executive branch in a clemency proceeding. *Id.* (citing *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984)).

Petition denied.