

SUPREME COURT OF ARKANSAS

No. CR 10-290

WYOUMAN D. CAMP

PETITIONER

v.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered May 24, 2012

PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[HOWARD COUNTY CIRCUIT
COURT, CR 08-93]

PETITION DENIED.

PER CURIAM

Wyouman D. Camp, the petitioner, requests that this court reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. We deny the petition to reinvest jurisdiction in the trial court because petitioner fails to demonstrate a meritorious proposed attack on the judgment that would provide a basis for issuance of the writ.

This court affirmed petitioner's conviction and life sentence for first-degree murder as an accomplice. *Camp v. State*, 2011 Ark. 155, ___ S.W.3d ___. Petitioner filed the instant petition in this court¹ while his petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2011) was pending below. 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. *Martin v. State*, 2012 Ark. 44 (per curiam) (citing *Kelly v. State*, 2010 Ark. 180 (per curiam)).

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

Petitioner sets forth a single claim as a basis for the writ. Petitioner presents the claim as one providing substantial evidence of a violation of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963). The claim concerns a deal struck between petitioner's accomplice, Harry Surber, and the prosecution.

Surber admitted to killing petitioner's wife, Robin Camp. Surber testified at petitioner's trial that Surber was introduced to petitioner by petitioner's sister, Jo Ann Hicks; that petitioner had hired him at this first meeting to shoot Robin; that petitioner originally planned to only have Surber cripple Robin with shots to the legs or back, but that, when Robin left him, petitioner had changed the plans to have Surber murder her; and that—with help from Hicks and petitioner—Surber carried out those plans to murder Robin. According to Surber's testimony, petitioner had negotiated a price for each of the two plans, had made payments to Surber, had furnished a gun to Surber, had shown Surber Robin's car, had helped Surber and Hicks locate Robin's new apartment, and had given specific directions for carrying out both a failed attempt to shoot Robin at her home and the ultimately successful attempt to murder Robin at the store where she worked.

In Surber's testimony at trial, he indicated that, after his arrest for the murder, he was at first determined that he would stick with the plans and that he would bear the consequences alone; that is, as he put it, that he would have "rode my own heat." Later, his sister convinced him to "just do the right thing, tell the truth." After that, Surber cooperated with the police. Surber told the police that he would give them information if they would not seek the death penalty. Surber testified that he was told that the prosecutor could make no promises, but that

the prosecutor would do everything that he could in that regard.

Petitioner's stated basis for the writ is that there was a significant discrepancy concerning this deal between the prosecution and Surber, as it was presented to the jury, and the sentence that was actually imposed upon Surber for the murder. Petitioner contends that the jury would have been misled into believing that Surber would receive a life sentence for the crime. Petitioner has attached to his petition a copy of a judgment showing a term of years for Surber's conviction on first-degree murder. Petitioner asserts that the alleged false representation that Surber would receive a life sentence artificially enhanced the credibility of Surber's testimony. He desires a hearing to determine whether there was an undisclosed contingency agreement for reduction of the sentence depending upon Surber's testimony at trial.

The remedy in a proceeding for a writ of error coram nobis 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. *Burks v. State*, 2011 Ark. 173 (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 v. State*, 2012 Ark. 44 (per curiam). A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Loggins v. State*, 2012 Ark. 97 (per curiam). 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).

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). We are not required to accept the allegations in a petition for writ of error coram nobis at face value. *Goff v. State*, 2012 Ark. 68, ___ S.W.3d ___ (per curiam). The evidence presented at trial stressed that there were no promises made in return for Surber's testimony and did not in any way appear to indicate that a particular sentence had been promised to Surber. Even assuming the existence of a different deal with the prosecution, however, petitioner's claim does not warrant relief.

Allegations of a *Brady* violation fall within one of the four categories of error that this court has recognized. *Hogue*, 2011 Ark. 496. The fact that a petitioner alleges a *Brady* violation alone is not sufficient to provide a basis for error coram nobis relief. *Id.* Assuming that the alleged withheld evidence meets the requirements of a *Brady* violation and is both material and prejudicial, in order to justify issuance of the writ, the withheld material evidence must also be such as to have prevented rendition of the judgment had it been known at the time of trial. *Id.* To merit relief, a petitioner must demonstrate that there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the information been disclosed at trial. *Id.* Petitioner does not make that demonstration.

Surber's testimony, as petitioner contends, was pivotal in this case. A successful attack on Surber's credibility may have significantly influenced the jury. Highlighting a deal struck with

the prosecution for a term of years on sentencing, however, would not appear to be an attack that could have been successful. Even if, as petitioner alleges, the jury had been misled concerning the prosecution's deal with Surber, having the accurate information concerning the deal was unlikely to have significantly altered the jury's assessment of Surber's credibility.

Surber's testimony was detailed and remarkably consistent with the events as described in the testimony that Hicks provided. So much so that the defense commented on whether such detail and consistency was not rehearsed. The police located, from two different locations, physical evidence presented at trial from information that Surber had provided. There was corroborating evidence that included phone records that validated calls between the accomplices, a call to a local business concerning the hours of operation, and the accomplices' movements, both to discuss the plan as it evolved and to carry it out. Other witnesses confirmed the victim's fear of her husband, and one of those witnesses confirmed that she had provided an address for the victim consistent with Surber's story. Video surveillance footage showed cars that, on the morning of the murder, passed the store where Robin was shot, and that footage was also consistent with Surber's testimony of what occurred. Other witnesses confirmed that the older, pearl-handled gun that Surber identified as the murder weapon had been in petitioner's possession prior to the murder and that petitioner's brother had at one time carried a similar weapon as the sheriff.

This extensive corroborating evidence presented at trial lent a great deal of credibility to Surber's testimony, and a change in the actual sentence that Surber was to receive is unlikely to have changed the jury's assessment. Petitioner's claim that the deal was for a term of years does

not raise a reasonable probability that the judgment of conviction would not have been rendered if the alleged undisclosed information had been available.

During cross-examination, defense counsel questioned Surber concerning the deal that Surber indicated had been struck. Counsel's questions implied that Surber had changed his story to implicate petitioner so that Surber could get the prosecution to take the death penalty off the table, and counsel asked if Surber knew of any bigger incentive to change his story than that. The point is a valid one. Surber acknowledged a very great incentive in the prosecutor's offer to do what he could to avoid seeking the death penalty. While a deal to further reduce the sentence to a term of years might have been a bigger bonus, it does not appear that offer could have provided any better incentive than the one that had been acknowledged.

Petitioner provided no facts to support a claim that there was any deal crafted to specifically implicate petitioner. Indeed, he expresses a desire for a hearing in order to investigate the possibility of raising that claim. The more general claim that he offers facts to support—that Surber may have been promised a term of years in order to cooperate—is not one that concerns material that would have impeached Surber further. Petitioner has failed to meet his burden to set forth a meritorious proposed attack on the judgment as a basis for issuance of the writ. Accordingly, we deny the petition to reinvest jurisdiction in the trial court.

Petition denied.