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SUPREME COURT OF ARKANSAS

No. CR 12-169

ANDREW DAVIS APPELLANT v. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** May 24, 2012 PRO SE MOTION FOR EXTENSION OF TIME TO FILE BRIEF [DESHA COUNTY CIRCUIT COURT, CR 06-33, CR 06-34, HON. SAM POPE, JUDGE] APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2006, appellant Andrew L. Davis entered a plea of guilty to aggravated robbery in two separate criminal cases in the Desha County Circuit Court. He was sentenced as a habitual offender to 360 months' imprisonment in each case to be served concurrently. After the judgment was entered, appellant filed in the trial court a pro se motion to correct a clerical mistake in the judgment-and-commitment order, contending that the Arkansas Department of Correction ("ADC") had miscalculated his parole-eligibility date. The motion was denied, and appellant appealed from the order. This court affirmed. *Davis v. State*, CR 08-285 (Ark. Oct. 2, 2008) (unpublished per curiam).

On January 12, 2012, appellant filed in the trial court a pro se petition for writ of error coram nobis in which he again contended that the ADC had miscalculated his parole-eligibility date. The trial court dismissed the petition, and appellant has lodged an appeal in this court from the order. Appellant now seeks by pro se motion an extension of time to file his brief-in-chief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief, including the denial of a petition for writ of error coram nobis, will not be permitted to proceed where it is clear that the appellant could not prevail. *Smith v. State*, 2011 Ark. 306 (per curiam); *Williams v. State*, 2011 Ark. 203 (per curiam); *see also Guy v. State*, 2011 Ark. 305 (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Hoover v. State*, 2012 Ark. 136 (per curiam); *Coley v. State*, 2011 Ark. 540 (per curiam); *Pinder v. State*, 2011 Ark. 401 (per curiam); *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Fudge v. State*, 2010 Ark. 426 (per curiam); *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *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. *Loggins v. State*, 2012 Ark. 97 (per curiam); *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 the judgment. *Hoover*, 2012 Ark. 136; *Loggins*, 2010 Ark. 97; *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 v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam); *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 v. State*, 2011 Ark. 541; *Pinder*, 2011 Ark. 401; *Webb v. State*, 2009 Ark. 550 (per curiam); *Sanders*, 374 Ark. 70, 285 S.W.3d 630.

Appellant's ground for relief pertaining to his parole-eligibility status did not fit within one of the four categories for coram-nobis relief, and the allegation did not demonstrate that there was some fundamental error of fact extrinsic to the record. Questions concerning parole eligibility are not matters properly considered by the sentencing court. *See Wiggins v. State*, 299 Ark. 180, 771 S.W.2d 759 (1989). The ADC's calculation of appellant's parole-eligibility date was not a ground for granting a writ of error coram nobis. Accordingly, the trial court did not err when it dismissed the petition.

Appeal dismissed; motion moot.