

ARKANSAS SUPREME COURT

No. CR 79-162

RONALD DEAN MATTHEWS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 15, 2008

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF JEFFERSON COUNTY, CR 77-
264]

PETITION DENIED.

PER CURIAM

In 1979, petitioner Ronald Dean Matthews was convicted of first-degree escape, theft of property, and kidnapping. Petitioner was sentenced as a habitual offender to an aggregate term of eighty years' imprisonment. This court affirmed the judgment. *Matthews v. State*, 268 Ark. 484, 598 S.W.2d 58 (1980). In 1992, petitioner sought permission to proceed in circuit court with a petition for postconviction relief under Ark. R. Crim. P. 37.1, but his petition was denied. *Matthews v. State*, CR 79-162 (Ark. Dec. 14, 1992) (per curiam). Next, petitioner filed two petitions that sought a writ of habeas corpus in circuit court, which were also unsuccessful. *See Matthews v. State*, CR 99-639 (Ark. Sept. 16, 1999) (per curiam). In 2001, petitioner filed in this court a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis, which was denied. *Matthews v. State*, CR 79-162 (Ark. Oct. 18, 2001) (per curiam).

Now petitioner has once again filed a pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis, and the matter is before us. In his petition,

petitioner asserts that he was suffering from a mental disease and insane at the time he committed the crime and at the time of trial, and alleges the prosecution withheld evidence consisting of a 1976 medical report on petitioner with a diagnosis of paranoid schizophrenia. Petitioner's claims are repetitive of those contained in his previous petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis, with the sole distinction that, rather than a general claim that the prosecution withheld evidence, petitioner now asserts somewhat more specifically that the Arkansas Department of Correction provided the prosecution with a copy of the report and that information was withheld from the defense. He attaches a letter from Jim Mabry¹ which indicates Mr. Mabry was requesting the interview that resulted in the report.

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *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)).

In previous cases, a writ of error coram nobis has been recognized as available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty

¹ Petitioner does not identify Mr. Mabry, and the letter only indicates Mr. Mabry was "Acting Commissioner" at the time. There is no letterhead visible on the copy of the letter, but Mr. Mabry has been associated with the Arkansas Department of Correction.

plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). It is a petitioner's burden to show that the writ is warranted. *Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003).

Petitioner asserts a claim that falls within one of the four recognized categories because he alleges insanity at the time of his trial. While a defendant's previous diagnosis of a mental illness alone is not sufficient to have prevented rendition of the judgment, the diagnosis petitioner alleges may raise issues concerning his competency that could have potentially prevented a judgment. The record of his trial does not indicate that any competency hearing was conducted. As was also the case in *Echols*, however, a hearing in the trial court is not warranted in this case because petitioner has failed to meet his burden to show due diligence.

There is no specific time limit for seeking a writ of error coram nobis, but due diligence is required in making an application for relief and in the absence of a valid excuse for delay, the petition will be denied. *Id.* at 419, 125 S.W.3d 157. Due diligence requires that (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; or (3) upon discovering the fact, the defendant did not delay bringing the petition. *Id.*

Here, petitioner contends that the prosecution was aware of the test results and diagnosis but withheld that information from the defense. Petitioner asserts that Mr. Mabry's letter supports this allegation, but petitioner does not make clear what connection, if any, that the individual to whom the letter is addressed had to petitioner's case. Mr. Mabry was associated with the Department of

Correction, and the letter concerning petitioner, along with the medical report, should have been included in petitioner's inmate file. Petitioner does not indicate when or how he became aware of the letter or the report, but he has not made a showing that the contents of that file were not readily available to the defense for review at the time of his trial.

As we noted in our opinion concerning petitioner's previous petition to reinvest jurisdiction for the trial court to consider a petition for writ of error coram nobis, petitioner asserted in his Rule 37.1 petition that trial counsel was aware that petitioner had a history of mental illness. Regardless as to whether the letter might show that the prosecution had actual knowledge of the medical report as petitioner alleges, because counsel was aware of his medical history, petitioner has not shown that the report could not have been presented at trial by counsel. Petitioner has not shown due diligence where the report could have been discovered because it was readily available to counsel in petitioner's inmate file. The letter petitioner has attached does not demonstrate that the file was not readily available to petitioner's attorney or that the report was not contained in the file.

Petition denied.