

SUPREME COURT OF ARKANSAS

No. CR 90-83

ANTONIO DEMARION COLEY
PETITIONER

v.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered December 15, 2011

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL COURT
TO CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS [PULASKI
COUNTY CIRCUIT COURT, CR 89-423]PETITION DENIED.**PER CURIAM**

In 1989, Antonio Demarion Coley was found guilty in CR 89-423 of aggravated robbery and forgery for which he was sentenced as a habitual offender to life plus thirty years' imprisonment. The convictions arose from a criminal episode at a "Jack Box" convenience store. We affirmed. *Coley v. State*, 304 Ark. 304, 801 S.W.2d 647 (1991).

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 in CR 89-423.¹ 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. *Pinder v. State*, 2011 Ark. 401 (per curiam); *Dickerson v. State*, 2011 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 ___); see also *Dansby*

¹For clerical purposes, the petition was assigned the docket number for the direct appeal of the judgment of conviction, CR 90-83.

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. *Pinder*, 2011 Ark. 401; *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Fudge*, 2010 Ark. 426; *Barke 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. *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. *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. *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. *Cloird*, 2011 Ark. 303; *Smith*, 2011 Ark. 306; *Gardner v. State*, 2011 Ark. 27 (per curiam); *Barke*, 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 Robert Green, a fellow inmate of the Arkansas Department of Correction, confessed to him in 2010 that Green had committed the offenses at a Circle K store and a Jack Box store. In an affidavit appended to the petition, Green avers that in a conversation with petitioner he became aware that petitioner had been charged with crimes that Green committed in 1996 or 1997.² Green alleges that he did not inform petitioner that he had committed the offenses until 2009.

The petition for writ of error coram nobis is denied. It is well settled that the mere fact that another person has confessed to a crime cannot, alone, be grounds for relief. *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). 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.

²The affidavit also makes reference to criminal offenses committed by Green at a Circle K convenience store. Green states petitioner was also charged with those offenses, but the instant coram-nobis petition pertains only to the offenses committed at the Jack Box store.