SUPREME COURT OF ARKANSAS

No. CR 95-985

GREG HOGUE PETITIONER v. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered** November 17, 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 94-904] PETITION DENIED.

PER CURIAM

A jury found petitioner Greg Hogue guilty of capital murder for the death of Jess Brown, the owner of a convenience store, and sentenced Hogue to life imprisonment without parole. This court affirmed the judgment. *Hogue v. State*, 323 Ark. 515, 915 S.W.2d 276 (1996). Hogue has filed a petition in this court seeking leave to file a petition in the circuit court for writ of error coram nobis.[1] Because he has failed to show that the writ is warranted, we deny the petition.

This court will grant permission for a petitioner to proceed with a petition for a writ of error coram nobis only when it appears the proposed attack on the judgment is meritorious. *Whitham v. State*, 2011 Ark. 28 (per curiam); *Buckley v. State*, 2010 Ark. 154 (per curiam). It is a

[1]For clerical purposes, the petition was assigned the same docket number as the direct appeal. 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. *Kelly v. State*, 2010 Ark. 180 (per curiam). A petition to reinvest jurisdiction in the trial court is necessary after a judgment has been affirmed on appeal because the circuit court may entertain a petition for the writ only after this court grants permission. *Cloird v. State*, 2011 Ark. 303 (per curiam).

petitioner's burden to show that the writ is warranted. *Scott v. State*, 2009 Ark. 437 (per curiam).

Petitioner alleges that he has discovered previously undisclosed evidence, specifically certain documents that were withheld from the defense in violation of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963). The evidence that petitioner alleges that the prosecution withheld, and which he alleges provides a basis for issuance of the writ, consists of five documents: (1) a warrant for the arrest of appellant's codefendant, Mark Poindexter, on charges that included DWI and manslaughter and that related to a car wreck that occurred within a few days after the murder; (2) a handwritten letter that, as petitioner asserts, makes reference to a deal with Poindexter concerning the charges associated with the wreck; (3) a statement from Myron McClendon, Poindexter's brother, about statements by Poindexter concerning the murder; (4) a statement from Poindexter that was inconsistent with his trial testimony; (5) a statement by Terron Miller that included a description of petitioner's attire on the night of the murder.

The remedy in a proceeding for the writ 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 petition must bring forth some fact, extrinsic to the record, that was not known at the time of trial. *Pinder v. State*, 2011 Ark. 401 (per curiam).

Allegations of a *Brady* violation fall within one of the four categories of error that this court has recognized. *Id.* The fact that a petitioner alleges a *Brady* violation, however, is not

alone sufficient to provide a basis for error coram nobis relief. *Burks*, 2011 Ark. 173. Assuming that the 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.*

The issues that petitioner raises concerning the first four documents were not unknown at the time of trial, and petitioner fails to establish that there were *Brady* violations concerning the documents. Petitioner does not demonstrate that the evidence was not made available to the defense; he simply asserts that the defense made a broad discovery request, he and counsel were unaware of the documents, and the documents were contained in the police file. This court is not required to accept the allegations in a petition for writ of error coram nobis at face value. *Scott v. State*, 2009 Ark. 437 (per curiam). Considering the testimony at trial and the discussions at bar, the defense was obviously aware of the existence of the documents.

Counsel raised an objection concerning the short notice received confirming the deal struck between Poindexter and the prosecution. McClendon and Poindexter each testified concerning the wreck, the charges that resulted, and the fact that there was a deal with the prosecution for the testimony. The previous statements that each of the two witnesses had made were mentioned, and the inconsistencies that petitioner raises were addressed at trial. Even if the evidence had not been disclosed, under the circumstances here, the violation would

have had little, if any, impact. Whether counsel had seen the actual documents or not, counsel was aware at trial of the information and issues that petitioner would now raise.

As for the last document, petitioner again fails to 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. Petitioner asserts that Miller said that petitioner was wearing a certain jacket and hat at a party on the night of the murder. The evidence at trial was that one of the two men who entered the convenience store and shot Jess Brown was wearing a red ski mask. There was testimony that connected petitioner to a red ski mask, including testimony that he had such a mask shortly before the murder. Miller stated that he was sure that petitioner was wearing the jacket that he described, but he was not sure that petitioner was wearing the hat that he possibly remembered. Aside from that uncertainty, the testimony failed to eliminate the potential that petitioner could have been carrying the mask, rather than wearing it, as witnesses who were at the same party testified.

Petitioner has failed to set forth a basis for issuance of the writ. Accordingly, we deny the petition to reinvest jurisdiction in the trial court.

Petition denied.