

ARKANSAS SUPREME COURT

No. CR 97-401

WILLIE GASTER DAVIS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 10, 2008

PRO SE MOTION FOR
RECONSIDERATION OF DENIAL
OF PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF DESHA COUNTY, CR 95-110]

MOTION DENIED.

PER CURIAM

In 1996, a jury found petitioner Willie Gaster Davis guilty of first-degree murder, robbery, theft of property, and false imprisonment, and sentenced him to a term of life imprisonment. This court affirmed the conviction and sentence. *Davis v. State*, 330 Ark. 76, 953 S.W.2d 559 (1997). In 2007, petitioner filed a pro se petition in this court for writ of error coram nobis. We treated the petition as one to reinvest jurisdiction in the trial court to consider a petition for the writ and denied it. *Davis v. State*, CR 97-401 (Ark. Jan. 31, 2008) (per curiam).¹ Petitioner has now filed this pro se motion for reconsideration of that decision.

In his motion, petitioner alleges that an order concerning the collection of blood, saliva and

¹ For clerical purposes, the petition was assigned the same docket number as the direct appeal. In those instances where the judgment of conviction was entered on a plea of guilty or nolo contendere, or the judgment of conviction was not appealed, the petition for writ of error coram nobis is filed directly in the trial court. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). After a judgment has been affirmed on appeal, however, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Id.*

hair samples from petitioner and his codefendants was withheld from the defense, that the codefendant's samples were withheld, and that none of petitioner's DNA was found on the victim. He argues that his case is similar to *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004), and that the hair samples here were as relevant as the hair samples from the victim's body were in that case. Petitioner asserts that evidence that his codefendant was present at the crime scene was important and would have been admissible. Petitioner alleges that the State's withholding of the order was tampering, and argues that this somehow establishes the relevance of the evidence. Petitioner asserts that the alleged withholding of the order satisfies the criteria to establish a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

As we explained in our previous opinion, in order to establish a claim of a *Brady* violation sufficient to support a writ of error coram nobis, a petitioner must show that there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the claimed exculpatory evidence been disclosed at trial. *See State v. Larimore*, 341 Ark. 397, 408, 17 S.W.3d 87, 94 (2000). Whether any of the evidence that petitioner asserts was withheld may have been relevant or not, it would not have been sufficient to show a reasonable probability that the judgment would have been prevented.

Petitioner bases his argument on his assertion that the withheld evidence would have established that the hairs or physical evidence from the body belonged to his codefendant, and that, once established, this withheld evidence was as important as the hairs on the victim's body in the *Johnson* case. But, the *Johnson* decision is not applicable to the circumstances of petitioner's case.

The *Johnson* opinion dealt with issues concerning a request for scientific testing under Act 1780 of 2001. More importantly, the hairs in that case were key evidence linking the defendant to

the victim's body. Here, whether there was physical evidence on the body or not, petitioner was linked directly to the victim's body because he was found asleep next to it on a couch in his house. Even if the allegedly withheld evidence established the presence of petitioner's codefendant's hair on the victim, that result would have had little effect on the conviction because testimony established that petitioner and his codefendants were in a car with the victim shortly before her death. Other evidence in the case connected petitioner to the body and established his codefendant's contact with the victim. Petitioner's situation is not analogous to the defendant's in *Johnson*. In his motion for reconsideration, petitioner has offered no additional basis that would support our granting permission to proceed with a petition for the writ, or pointed to any error in our previous decision.

Motion denied.