Cite as 2010 Ark. 363

SUPREME COURT OF ARKANSAS

No. CR 98-1167

RICKY LEE SCOTT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 30, 2010

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [CIRCUIT COURT OF CROSS COUNTY, CR 96-61]

PETITION DENIED.

PER CURIAM

In 1998, a jury found petitioner Ricky Lee Scott guilty of murder in the first degree and sentenced him to life imprisonment. This court affirmed. *Scott v. State*, 337 Ark. 320, 989 S.W.2d 891 (1999).

Following affirmance of the judgment, petitioner filed a series of requests for postconviction relief, none of which was successful. *See Scott v. State*, 355 Ark. 485, 139 S.W.3d 511 (2003); *Scott v. State*, CR 06-10 (Ark. January 26, 2006) (unpublished per curiam). Now before us is petitioner's fourth pro se petition requesting that this court reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1]

[1]For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis was assigned the same docket number as the direct appeal of the judgment.

The 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. *Grant v. State*, 2010 Ark. 286 , ___ S.W.3d ___ (per curiam) (citing *Newman v. State*, 2009 Ark. 539, ___ S.W.3d ___); *see also Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

As with petitioner's prior petitions, we find no ground to grant the relief sought and deny the petition.[2] Petitioner first asserts that a mistrial should have been granted after a witness made an inflammatory statement and that the jury was biased against him. The claims are not within the purview of a coram nobis proceeding.

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). 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. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid.

---

[2]*See Scott v. State*, 2009 Ark. 437 (per curiam); *Scott v. State*, CR 98-1167 (Ark. Dec. 4, 2008) (unpublished per curiam); *Scott v. State*, CR 98-1167 (Ark. Oct. 12, 2006) (unpublished per curiam).

Echols v. State, 360 Ark. 332, 201 S.W.3d 890 (2005). 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. *Grant*, 2010 Ark. 286 (citing *Newman*, 2009 Ark. 539); *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam).

It is clear that the issues raised by appellant concerning the witness's testimony and the alleged jury bias were issues that were known at the time of trial and could have been addressed then. As such, the assertions are not cognizable in a coram nobis proceeding.

Petitioner's final allegation is that there is newly discovered evidence not available at the time of his trial concerning the authenticity of the written statements of three witnesses obtained on March 4, 1996, which appellant indicates was the night of the murder. He contends that this evidence will show that, but for prosecutorial misconduct, there is a reasonable probability that the outcome of the trial would have been different. While petitioner asserts that the statements were not available at trial, he states that prior to his trial, an investigator with the sheriff's office gave him a copy of the "three previously undisclosed written witness statements" taken on the night of the murder. He argues that the three statements were somewhat different from those made later in the level of detail and in the handwriting. He claims that he has developed proof that the statements used at trial, which he alleges were taken on March 16, 1996, were forgeries. He contends that the defense was

led to believe that there was only one set of witness statements made on March 16, 1996, but, in truth, there were two sets—one made on March 4, 1996,and one twelve days later on March 16, 1996. Although petitioner asserts that the evidence would have changed the outcome of his trial, he presents nothing to support that claim. The court is not required to accept at face value the allegations of the petition. *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)).

By his own statements, petitioner concedes that he was aware prior to trial of the three statements made March 4, 1996. He also concedes that the witnesses were questioned at trial on the accuracy of the statements introduced and on whether more than one set of statements was taken by the authorities. Under these circumstances, even if appellant has recently obtained the opinion of a handwriting expert concerning the second set of written statements, he has not met his burden of demonstrating that there was evidence withheld at the time of trial.

A claim of newly discovered evidence in itself is not a basis for coram nobis relief. *Webb v. State*, 2009 Ark. 550 (per curiam) (citing *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam)). There is a distinction between fundamental error which requires issuance of the writ and newly discovered information which might have created an issue to be raised at trial had it been known. *Mosley v. State*, 333 Ark. 273, 968 S.W.2d 612 (1998) (per curiam). At most, petitioner has shown that the defense challenge to the statements introduced at trial could have been bolstered by the expert opinion he has alleged to have

recently obtained. He has not shown that there is newly discovered evidence sufficient to have precluded the entry of the judgment.

The State in its response to the petition urges this court to find that petitioner has not been diligent in bringing the claim of new evidence to challenge the statements. We agree. While there is no specific time limit for seeking a writ of error coram nobis, 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. *Echols v. State*, 354 Ark. 530, 127 S.W.3d 486 (2003). 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; and (3) upon discovering the fact, the defendant did not delay bringing the petition. *Id.* Petitioner has fallen far short of demonstrating diligence.

Petition denied.