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SUPREME COURT OF ARKANSAS

No. CR 98-485

JAMIE D. LEE PETITIONER V. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered** December 1, 2011 PRO SE PETITION TO REINVEST JURISDICTION IN THE CIRCUIT COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS AND MOTION FOR APPOINTMENT OF COUNSEL TO REVIEW THE RECORD [MILLER COUNTY CIRCUIT COURT, CR 96-534] PETITION AND MOTION DENIED.

PER CURIAM

In 1997, petitioner Jamie D. Lee was found guilty by a jury of capital murder and four counts of first-degree battery. He was sentenced to life imprisonment without the possibility of parole for capital murder and sentenced to an aggregate term of eighty years' imprisonment for the four battery counts. We affirmed. *Lee v. State*, 340 Ark. 504, 11 S.W.3d 553 (2000).

Now before us is petitioner's petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] Petitioner also asks by motion that an attorney be appointed to review the record in his case.

The motion for appointment of counsel is denied. There is no ground stated in the coram-nobis petition that warrants appointment of an attorney.

A petition for leave to proceed in the trial court is necessary because the circuit court can

[1]For clerical purposes, this petition was assigned the docket number for the direct appeal of the judgment of conviction.

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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); *Cloird v. State*, 2011 Ark. 303 (per curiam); *Dickerson v. State*, 2011 Ark. 247 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam); *Fudge v. State*, 2010 Ark. 426 (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Cloird*, 2011 Ark. 303; *Newman v. State*, 2010 Ark. 10, __ S.W.3d __ (per curiam). 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. To warrant a writ of error coram nobis, a petitioner has the burden of bringing forth some fact, extrinsic to the record, that was not known at the time of trial. *Cloird*, 2011 Ark. 303; *see also Dickerson*, 2011 Ark. 247; *Cox*, 2011 Ark. 96. Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Smith v. State*, 2011 Ark. 306 (per curiam); R*ayford v. State*, 2011 Ark. 86 (per curiam); *Barker v. State*, 2010 Ark. 354 (per curiam); *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005).

Petitioner's primary ground for the writ centers on the decision of the trial court to dismiss the sole black juror, Joe Paxton, and replace him with a white alternate juror. On direct appeal, petitioner contended that the trial court erred in taking the word of a jail trusty, Sandy Davis, over the word of Paxton on the question of whether Paxton had been discussing the trial with third parties. He argued that Davis reported that two or three other jurors were also talking

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about the case and should have been removed from the jury as well. We noted on appeal that the record reflected a number of problems with juror Paxton. Early in the trial, defense counsel informed the court that Paxton had approached him and said that he (Paxton) was a famous singer. Davis later told the deputy sheriff that Paxton had discussed the trial with him. The court conducted an investigation of all twelve jurors and determined that, contrary to petitioner's assertion, Paxton was the only juror who spoke to Davis. One of the other jurors told the court that Paxton tried to talk to her and that she saw him talking to someone else. While she did not state that Paxton was talking to her or the other person about the case, the court, alluding to Paxton's erratic behavior, determined that it was in the best interests of the parties that the remaining alternate juror be empaneled in place of Paxton. This court held on appeal that the trial court did not abuse its discretion in removing Paxton from the jury and that petitioner was not prejudiced by the seating of the alternate juror.

Petitioner now argues that some of Davis's[2] testimony concerning Davis's interaction with jurors was deleted from the trial transcript. He asserts that the court reporter, prosecutor, and the trial judge committed egregious misconduct, ostensibly by misleading the appellate court. Petitioner has appended to his petition a number of affidavits of persons who aver that they witnessed Davis's testimony. Petitioner points to a 1997 subpoena for Davis that petitioner has acquired as proof that Davis was called to testify.

We do not find that petitioner has stated a ground for the writ. He has appended to the petition a copy of a motion filed in this court by his attorney on April 26, 1999, in which counsel

[2]Petitioner refers to Davis as, "Sammy Davis," while our opinion on direct appeal refers to, "Sandy Davis."

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asked to correct the record because the testimony of Davis was omitted from the record for appeal. In response to that motion, this court remanded the matter to the trial court to settle the record. On May 13, 1999, this court issued a writ of certiorari to the circuit clerk and court reporter. The writ was duly returned, and a new briefing scheduled was set for the appeal. It is clear from the information presented by petitioner himself and an examination of our docket that the facts forming the basis for the writ of error coram nobis were known to him by the time of the completion of the direct appeal. Nothing in the petition establishes that there was any issue that could not have been addressed at trial, on the record on appeal, or in the direct-appeal proceeding.

In a related claim, petitioner urges this court to recall the mandate issued on direct appeal on the grounds that he was not afforded an appropriate appeal. There is no need to elaborate on the rare circumstances that must exist before this court will recall a mandate. *See Robbins v. State*, 353 Ark. 556, 114 S.W.3d 217 (2003). It will suffice to say that petitioner has stated no ground to recall the mandate in his case.

While petitioner specifically states that he is not contending that his attorney on appeal was ineffective, he complains that the record on appeal and the brief filed by counsel were inadequate due to counsel's errors.[3] He asks that this court grant him leave to proceed with a belated petition for postconviction relief pursuant to Arkansas Criminal Procedure Rule 37.1

[3]Allegations of ineffective assistance of counsel are outside the purview of a coram- nobis proceeding. *Benton v. State*, 2011 Ark. 211 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam) (citing *Mills v. State*, 2009 Ark. 463 (per curiam)).

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(2011) because of the "extraordinary circumstances." The request is denied.

If petitioner desired to proceed under the rule, his petition should have been filed with the circuit clerk within sixty days of the date the mandate was issued following affirmance of the judgment in his case. He did not do so, and the time limitations imposed in Rule 37.2(c) for filing a petition are jurisdictional in nature. If they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Sims v. State*, 2011 Ark. 135 (per curiam); *Trice v. State*, 2011 Ark. 74 (per curiam) (citing *Mills v. State*, 2010 Ark. 390 (per curiam)); *Gardner v. State*, 2010 Ark. 344 (per curiam); *Harris v. State*, 2010 Ark. 314 (per curiam); *Crawford v. State*, 2010 Ark. 313 (per curiam). There is no provision in the rule for a belated petition.

Petition and motion denied.