

ARKANSAS SUPREME COURT

No. CACR 00-645

WILLIE HUTCHERSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 15, 2009

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS [CIRCUIT
COURT OF PULASKI COUNTY, CR
99-1834]

PETITION DENIED.

PER CURIAM

In 2000, petitioner Willie Hutcherson was convicted by a jury of four counts of aggravated robbery, three counts of misdemeanor theft of property and one count of felony theft of property. He was sentenced as a habitual offender to an aggregate term of 2880 months' imprisonment which included 60 months' imprisonment for possession of a firearm by a felon. The Arkansas Court of Appeals affirmed. *Hutcherson v. State*, 74 Ark. App. 72, 47 S.W.3d 267 (2001).

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.¹ The petition to reinvest jurisdiction 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. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

The writ is allowed only under compelling circumstances to achieve justice and to address

¹For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). These errors 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. *Id.*

Petitioner claims here that material evidence was withheld by the prosecutor and that she engaged in misconduct. According to the instant petition, during a pretrial hearing, petitioner brought to the attention of counsel statements given by two police officers that allegedly contained exculpatory evidence. He further contends that the prosecutor and trial counsel conspired to suppress these statements. Petitioner attempts here to couch his argument in terms of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), in order to place his claim in one of the four categories for coram nobis relief. However, the facts as presented by petitioner do not support the claim that any evidence was withheld by the prosecutor, including allegedly material exculpatory evidence.

In addition, for the writ to issue following affirmance of the conviction, appellant must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). According to the petition, the officers' statements that are at the center of petitioner's argument were obtained by the defense in pretrial discovery and were not extrinsic to the record at the time of trial.

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). Petitioner has failed to make a showing that the allegations contained in his petition are meritorious or are grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis.

Petition denied.