

ARKANSAS SUPREME COURT

No. CACR 06-1488

Opinion Delivered January 22, 2009

CONNEAL BUCKHANNA
Petitioner

v.

STATE OF ARKANSAS
Respondent

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS AND
MOTION TO SUPPLEMENT THE
PLEADINGS [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-1178]

PETITION DENIED; MOTION MOOT.

PER CURIAM

In 2006, petitioner Conneal Buckhanna was convicted by a jury of possession of a controlled substance and possession of drug paraphernalia. He was sentenced as a habitual offender to an aggregate term of 360 months' imprisonment. The Arkansas Court of Appeals affirmed. *Buckhanna v. State*, CACR 06-1488 (Ark. App. Aug. 29, 2007).

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 In addition, petitioner filed a pro se motion to supplement the pleadings in this court with the petition that he intended to file in the circuit court after his petition was granted here. Because we deny the petition, the motion to supplement is moot.

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).

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

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). 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.* 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).

Petitioner claims here that the prosecutor withheld material exculpatory evidence. *See Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, he contends that on the day of the trial, the prosecutor reduced one charge filed against petitioner from possession with intent to deliver to mere possession of a controlled substance. As a result, petitioner posits that he was unprepared for trial and denied the opportunity to present an appropriate and complete defense to the new charge. He further claims that the prosecutor's actions violated the Sixth and Fourteenth Amendments to the United States Constitution.²

Here, petitioner's allegations clearly show that he was apprised of the amended charges prior to trial. Thus, petitioner failed to show that any actions by the prosecutor were extrinsic to the record or fell within one of the four categories for coram nobis relief. *Larimore, supra.*

²As clarification of the alleged facts underlying his arguments for coram nobis relief, petitioner referenced the proposed-petition exhibit to the motion to supplement to provide additional information. To the extent that new issues were raised in the proposed petition that were not contained in the instant petition, those arguments will not be considered. To the extent that the proposed-petition exhibit were to be considered as an amended petition for writ of error coram nobis, new arguments contained in the proposed petition failed to provide a basis for coram nobis relief. The new bases for relief are errors of the court at trial regarding improper sentencing, and ineffective assistance of counsel concerning petitioner's alleged drug-induced state at the time he was read his *Miranda* rights. None of these arguments form the proper basis for relief here. *See Pitts v. State, supra; McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

Additionally, arguments in the instant petition alluded to claims of ineffective assistance of counsel and postconviction relief. However, ineffective assistance claims are outside the purview of a coram nobis proceeding, and a petition for writ of error coram nobis is not a substitute for proceeding under Arkansas Rule of Criminal Procedure 37.1. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). No argument contained in the petition raises a ground for relief cognizable in a coram nobis proceeding, and the petition is denied.

Petition denied; motion moot.