

ARKANSAS SUPREME COURT

No. CR 01-1132 & CR 02-895

DENNIS JAMES SMITH
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 12, 2009

PRO SE PETITIONS TO REINVEST
JURISDICTION IN TRIAL COURTS
TO CONSIDER A PETITION FOR
WRIT OF ERROR CORAM NOBIS
AND PRO SE MOTIONS FOR
ISSUANCE OF SUBPOENAS
[CIRCUIT COURT OF DREW
COUNTY, CR 2000-123; CIRCUIT
COURT OF DESHA COUNTY, CR
2001-107]

PETITIONS TO REINVEST
JURISDICTION IN TRIAL COURTS
TO CONSIDER A PETITION FOR
WRIT OF ERROR CORAM NOBIS
DENIED; MOTIONS FOR ISSUANCE
OF SUBPOENAS MOOT.

PER CURIAM

In 2001, petitioner Dennis James Smith was convicted by a jury of numerous criminal charges in two separate cases. The Drew County jury found petitioner guilty of three counts of kidnapping, four counts of rape, two counts of attempted capital murder, one count of first-degree battery, and one count of vehicular piracy. Appellant received seven life sentences plus an additional 960 months' incarceration, all to be served consecutively. We modified the battery charge to second-degree battery, but affirmed the judgment as to all other charges. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). In Desha County Circuit Court, a jury convicted petitioner of aggravated robbery. He was sentenced to life imprisonment and we affirmed. *Smith v. State*, 351 Ark. 468, 95

S.W.3d 801 (2003).

Petitioner now asks that jurisdiction be reinvested in the trial courts to consider a petition for writ of error coram nobis in those cases.¹ Our permission is necessary because the trial court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission to proceed in the court. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis is 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 v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). For the writ to issue following the affirmance of a conviction, the burden is on the petitioner to show a fundamental error of fact that was extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

In the petitions filed here,² petitioner claims that he is innocent of all charges for which he has been convicted.³ He maintains that evidence exists that would prove his innocence and that he acted in self-defense. For relief, he avers that an attorney is needed to investigate all the charges that had been filed against him and to gather evidence for his defense of the criminal charges. As the petitions do not raise any of the four enumerated grounds for relief cognizable in a coram nobis proceeding, the petitions are denied. *Pitts v. State, supra*.

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

²Petitioner filed petitions for coram nobis relief on November 17, 2008, November 25, 2008, and December 19, 2008. On December 29, 2008, and January 15, 2009, he also filed in this court pro se motions for the issuance of subpoenas to witnesses and for the production of various evidentiary items. As we deny the petitions for coram nobis relief, the motions are moot.

³His entire argument in the third petition is “not guilty – transcripts.”

Petitions to reinvest jurisdiction in trial courts to consider a petition for writ of error coram nobis denied; motions for issuance of subpoenas moot.

Brown, J., not participating.