Cite as 2011 Ark. 199

SUPREME COURT OF ARKANSAS

No. CR 99-628

COREY SANDERS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 5, 2011

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [COLUMBIA COUNTY CIRCUIT COURT, CR 97-148]

PETITION DENIED.

PER CURIAM

This court affirmed a judgment against petitioner Corey Sanders that imposed a life sentence on a conviction for two counts of capital murder. *Sanders v. State*, 340 Ark. 163, 8 S.W.3d 520 (2000). Petitioner has on three occasions previously—proceeding pro se on two occasions and once represented by counsel—filed a petition in this court to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] Those petitions were denied each time. *See Sanders v. State*, 2010 Ark. 139 (per curiam); *Sanders v.*

[1] A prisoner who appealed his judgment and who wishes to attack his conviction by means of a petition for writ of error coram nobis must first request that this court reinvest jurisdiction in the trial court. *Kelly v. State*, 2010 Ark. 180 (per curiam). A petition to reinvest jurisdiction in the trial court is necessary after a judgment has been affirmed on appeal because the circuit court may entertain a petition for the writ only after this court grants permission. *Id.* (citing *Mills v. State*, 2009 Ark. 463 (per curiam)).

State, CR 99-628 (Ark. Nov. 11, 2004) (unpublished per curiam).[2] Petitioner has now filed a fourth such petition that seeks leave from this court to reinvest jurisdiction in the trial court so that petitioner may file a petition for writ of error coram nobis.

Petitioner's latest petition requesting this court reinvest jurisdiction in the trial court so that he may pursue error coram nobis relief alleges that petitioner recently obtained documents from the investigation of the crime that he contends were withheld by the prosecution. These documents included notes concerning potential witnesses and suspects, a note about a possible comparison of the bullets recovered from the victims to a weapon used in another crime, and a report of an incident involving one of the witnesses and the brother of petitioner's codefendant.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Whitham v. State*, 2011 Ark. 28 (per curiam); *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 894 (per curiam). The remedy is exceedingly narrow and appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *McCoy v. State*, 2011 Ark. 13 (per curiam). This court has previously recognized that a writ of error coram nobis was available to address errors found in four categories: insanity at the time of trial; a coerced guilty plea; material evidence

[2] Petitioner's second petition to pursue error coram nobis relief, which was filed by retained counsel, was denied without opinion by Per Curiam Order on December 6, 2007.

withheld by the prosecutor; a third-party confession to the crime during the time between conviction and appeal. *Webb v. State*, 2009 Ark. 550 (per curiam).

Allegations that the prosecution committed violations of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963), fall within the third recognized category of error. The fact that petitioner alleges a *Brady* violation, however, is not alone sufficient to provide a basis for error coram nobis relief. *Harris v. State*, 2010 Ark. 489 (per curiam). Assuming that withheld evidence meets the requirements of a *Brady* violation and is both material and prejudicial, in order to justify issuance of the writ, the withheld material evidence must also be such as to have prevented rendition of the judgment had it been known at the time of trial. *Thrash v. State*, 2011 Ark. 118 (per curiam). To merit relief, a petitioner must demonstrate that there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the information been disclosed at trial. *Id.*

In the petition, petitioner does not provide a demonstration that the evidence was not made available to the defense; he only asserts that the defense made a broad discovery request. This court is not required to accept the allegations in a petition for writ of error coram nobis at face value. *Scott v. State*, 2009 Ark. 437 (per curiam). More importantly, however, the evidence that petitioner alleges was withheld, even if it was demonstrated to have been withheld, would not have been sufficient to merit relief.

Petitioner contends that the evidence that he alleges was withheld could potentially lead to information that exonerates him, if further investigated. He asserts that some of the

information would have been helpful to impeach some witnesses. This court will grant permission for a petitioner to proceed with a petition for the writ in the trial court only when it appears the proposed attack on the judgment is meritorious. *Whitham v. State*, 2011 Ark. 28 (per curiam); *Buckley v. State*, 2010 Ark. 154 (per curiam). It is a petitioner's burden to show that the writ is warranted. *Scott v. State*, 2009 Ark. 437 (per curiam). None of petitioner's claims demonstrate a reasonable probability that the judgment of conviction would have been prevented if the information had been disclosed at trial.

At petitioner's trial, there was testimony that the police had other suspects in the case. As we have remarked in previous opinions, there was substantial evidence against petitioner. Several witnesses testified that they heard petitioner confess to a killing. A number of those witnesses testified that petitioner identified at least one of the victims specifically, and one of the witnesses also heard petitioner confess to killing the other victim. There was evidence that petitioner owed one of the victims money. The testimony was that petitioner had said that he would murder the victim to avoid the debt or that he had to kill the victim before the victim killed him. There was evidence that linked petitioner to the burning of the victim's car and that linked him to the victim's shoes. Other evidence placed petitioner and his codefendant in the victim's car a short time before gunshots were heard. The bodies were found in a well on property where petitioner had lived when he was a child.

Because the evidence connecting petitioner to the murders was strong, he does not show that the allegedly withheld evidence was sufficient to have prevented rendition of the

judgment against him. We consider the cumulative effect of the allegedly suppressed evidence to determine whether the evidence that was alleged to have been suppressed was material to the guilt or punishment of the individual. *Williams v. State*, 2011 Ark. 151 (per curiam); *see also Thrash v. State*, 2011 Ark. 118 (per curiam). In this case, petitioner's vague claims concerning possible evidence that might have been uncovered are not specific facts that warrant relief. An application should make a full disclosure of specific facts relied upon and not merely state conclusions as to the nature of such facts. *Scott*, 2009 Ark. 437. As petitioner has failed to carry his burden to show that the writ is warranted, we deny the petition.

Petition denied.