

**SUPREME COURT OF ARKANSAS**

No. CR 93-284

GARY CLOIRD  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

**Opinion Delivered** July 27, 2011

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS, FOR COPY OF MOTION FILED IN 2002 AT PUBLIC EXPENSE, FOR RETURN OF CASEWORK, AND FOR APPOINTMENT OF COUNSEL [JEFFERSON COUNTY CIRCUIT COURT, CR 92-78]

PETITION DENIED.

**PER CURIAM**

In 1992, petitioner Gary Cloird was found guilty of rape and theft of property. He was sentenced to an aggregate term of 35 years' imprisonment. We affirmed. *Cloird v. State*, 314 Ark. 296, 862 S.W.2d 211 (1993).

In 2002, petitioner filed in this court a pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. We granted leave to proceed with a petition limited to the issue of whether certain scientific testing results were available to the State before petitioner's trial; whether the results, if available, were favorable to the defense; and whether prejudice ensued to the defense as the result of the State's failure to

disclose the test results. *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002).<sup>1</sup> The trial court ultimately denied the petition filed there, and we affirmed the order on appeal. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). On June 22, 2011, petitioner filed a second petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis that is now before us.<sup>2</sup> A petition for leave to proceed 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. *Cox v. State*, 2011 Ark. 96 (per curiam); *Fudge v. State*, 2010 Ark. 426; *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 894 (per curiam) (citing *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61); see also *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011

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<sup>1</sup>With the petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis, petitioner also filed a petition contending that a writ of habeas corpus should issue on the ground that the circuit court in Jefferson County where he was convicted of rape did not have jurisdiction because the rape occurred across the county line in Arkansas County. We remanded the jurisdictional question to the trial court for an evidentiary hearing and findings of fact on the issue. On remand, the court determined that the rape occurred in Arkansas County. When the remand was returned, this court denied the petition for writ of habeas corpus as there was sufficient evidence to place petitioner at the scene of the victim's abduction in Jefferson County. As the abduction that culminated in the rape was a single criminal episode that began in Jefferson County, we held that the court in that county had jurisdiction over the offense. *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003).

<sup>2</sup>For clerical purposes, the petition was assigned the docket number for the direct appeal of the judgment of conviction, CR 93-284.

Ark. 28 (per curiam); *Fudge*, 2010 Ark. 426; *Barker v. State*, 2010 Ark. 354, 373 S.W.3d 865; *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). 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). We have held that a writ of error coram nobis was 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*, 336 Ark. at 583, 986 S.W.2d at 409. 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. *Grant*, 2010 Ark. 286, 365 S.W.3d 894 (citing *Newman*, 2009 Ark. 539, 354 S.W.3d 61); see also *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam); *Cloird*, 357 Ark. 446, 182 S.W.3d 477. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Webb v. State*, 2009 Ark. 550 (per curiam); *Sanders*, 374 Ark. 70, 285 S.W.3d 630. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Gardner v. State*, 2011 Ark. 27 (per curiam); *Barker*, 2010 Ark. 354, 373 S.W.3d 865; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005); *Venn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

As grounds for issuance of the writ, petitioner contends that this court failed to rule on a motion for appointment of counsel that he filed in the course of the 2002 proceeding in this

court when he filed his first error coram nobis petition and also sought a writ of habeas corpus. He contends that the motion was significant because it asserted that he was being psychologically tortured by hypnosis and drugs that were being introduced into his food while in custody. He argues that this court should have suspended all proceedings due to his psychological state and should not have granted the coram nobis petition in part or remanded the matter to settle the jurisdictional question raised in the habeas petition.

The claims are not grounds for a writ of error coram nobis. As stated, to warrant a writ of error coram nobis, a petitioner has the burden of bringing forth some fact that was not known at the time of trial. *Cox v. State*, 2011 Ark. 96 (per curiam) (citing *Webb v. State*, 2009 Ark. 550). Claims that involve a petitioner's mental state some years after trial are not cognizable as a ground for error coram nobis relief. For that reason, the petition to reinvest jurisdiction in the trial court is denied.

In the heading of his petition, petitioner also requests a copy at public expense of the motion he filed in 2002, which is presumably the motion for appointment of counsel referred to in the body of the petition; return of unspecified "casework;" and appointment of counsel. As there are no grounds stated for any of the requests, they are also denied.

Petition denied.