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SUPREME COURT OF ARKANSAS

No. CR 95-1314

LAWRENCE EDWARD MARTIN
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered February 2, 2012

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS AND MOTIONS FOR APPOINTMENT OF COUNSEL AND TO BE PRESENT AT RULING/HEARING [PULASKI COUNTY CIRCUIT COURT, NO. CR 94-2146]

PETITION DENIED; MOTIONS MOOT.

PER CURIAM

Petitioner Lawrence Edward Martin brings this petition in which he asks this court to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] Petitioner would challenge his conviction, affirmed by this court, on the charge of capital murder. *See Martin v. State*, 328 Ark. 420, 944 S.W.2d 512 (1997). Along with his petition, petitioner filed motions that seek appointment of counsel and that request his presence for any hearing on the matter.[2] Petitioner has failed to present a claim that would warrant the writ,

[1]For clerical purposes, the petition was assigned the same docket number as the direct appeal.

[2]The motion concerning the request for petitioner to be present does not clearly identify the basis for the request or whether it pertains to a hearing in this court or in the trial court. Petitioner did not request oral argument, and the particular provision of a rule of civil procedure that he cites, even if those rules were applicable, does not exist.

and we deny the petition. The motions are therefore moot.

Petitioner lists three bases for the writ in his petition. In the first, he asserts that his arrest was a pretext for a search and that certain evidence should not, as a result, have been admitted. In his second ground for relief, petitioner alleges that the trial court did not provide a mental evaluation, that it was required to do so, and that a mental evaluation would have shown that he was suffering from an allergy and mental obsession. In the last claim in the petition, petitioner asserts that there was new evidence that he discovered during a hearing in which the trial court stated that petitioner had been charged with additional charges and that those additional charges had been dismissed. Petitioner argues that this change resulted in a conviction on a charge that had not been made.

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)). Petitioner has therefore appropriately sought leave in this court to proceed in the trial court.

The remedy in a proceeding for a writ of error coram nobis 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. *Burks v. State*, 2011 Ark. 173 (per curiam).

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). To warrant a writ of error coram nobis, a petitioner has the burden of bringing forth some fact, extrinsic to the record, that was not known at the time of trial. *Pinder v. State*, 2011 Ark. 401 (per curiam). This court has previously recognized that a writ of error coram nobis was available to address errors found in only 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. *Webb v. State*, 2009 Ark. 550 (per curiam).

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). We grant permission to proceed with a petition for the writ only when it appears the proposed attack on the judgment is meritorious. *Whitham*, 2011 Ark. 28.

Petitioner's claims are largely based on trial error, rather than hidden or unknown facts. Issues of trial error, even those of constitutional dimension, could have been raised at trial or in some other legal proceeding and are not cognizable in a coram nobis proceeding. *Pinder*, 2011 Ark. 401. Petitioner's claim that the search was illegal is just such a claim. *See id.* He has not alleged any new information that, if not previously hidden in some way, could have resulted in suppression of the evidence. Instead, petitioner asserts ineffective assistance of counsel in failing to cross-examine a witness, and he proposes constitutional arguments for suppression of the evidence. We have consistently held that such claims of ineffective assistance of counsel are outside the purview of a coram nobis proceeding. *Butler v. State*, 2011

Ark. 542 (per curiam); *Benton v. State*, 2011 Ark. 211 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam); *Scott v. State*, 2009 Ark. 437 (per curiam); *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

Petitioner's second ground for the writ is likewise presented primarily as an allegation of trial error rather than any hidden error, in that he asserts error by the trial court in failing to conduct a mental evaluation. Again, he has not alleged that there is information not available at the time of trial that would have prevented the judgment. He does not allege that he was insane at the time of trial; he instead contends that he was not capable of forming the requisite intent at the time of the murder because of mental problems stemming from allergies and obsessions. Petitioner has not demonstrated that there exists any previously hidden fact concerning such a potential affirmative defense that he might show, or that those facts would be sufficient to have prevented rendition of the judgment. Petitioner's vague reference to allergies and obsessions does not make the necessary showing.

Although, in his last ground for relief, petitioner characterizes the statements made by the trial court as new evidence, those statements merely provided a summary of facts that the court appeared to have found in the trial record; the petition does not provide any indication that those facts were in fact new and would have been unknown at the time of trial. The charges filed against petitioner and the judgment against him are contained in the record. Any error in that regard was trial error that should have been challenged at the time.

Petitioner fails to set forth any fact, extrinsic to the record, that was not known at the time of trial. Because he has failed to meet his burden to show that the writ is warranted, we

deny the petition.

Petition denied.