

SUPREME COURT OF ARKANSAS

No. CR-02-1289

STEVEN PINDER

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered February 2, 2012

PRO SE MOTION FOR
RECONSIDERATION [COLUMBIA
COUNTY CIRCUIT COURT, NO. CR
2002-30]

MOTION DENIED.

PER CURIAM

Petitioner Steven Pinder was found guilty of two counts of rape and sentenced to life imprisonment by a Columbia County jury in 2002. We affirmed. *Pinder v. State*, 357 Ark. 275, 166 S.W.3d 49 (2004). We subsequently affirmed the trial court's denial of Pinder's petition for postconviction relief. *Pinder v. State*, CR 07-710 (Ark. May 22, 2008) (unpublished per curiam).

On May 16, 2011, petitioner filed a petition in this court seeking to reinvest jurisdiction in the circuit court to consider a petition for writ of error coram nobis, which we denied. *Pinder v. State*, 2011 Ark. 401 (per curiam). Now before us is petitioner's motion for reconsideration.¹ Because he has failed to establish that our denial of his petition was based on an erroneous statement of fact or conclusion of law, the motion for reconsideration is denied.

As we noted in the opinion denying his petition to reinvest jurisdiction in the circuit court, that petition was based entirely on evidence that petitioner alleged was withheld from the defense by the prosecutor, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), which is one of

¹For clerical purposes, this petition was assigned the docket number for the direct appeal of the judgment of conviction.

the four categories under which we have held that coram nobis relief is allowed.² See *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam). This evidence as alleged by petitioner consisted of (1) audio and video tapes of witness interviews that petitioner requested prior to trial, (2) evidence that the State police had conducted an illegal search of petitioner’s home, (3) evidence of prior false rape allegations made by the victim against another family member, (4) an accurate record of the trial for use in petitioner’s direct appeal, (5) an email to the victim from her boyfriend, and (6) a medical report by Dr. Jerry Jones of Arkansas Children’s Hospital that found that the victim in this case was a virgin and “did retain her hymen.”

In the instant motion for reconsideration, petitioner argues that this court erred in determining that the petition failed for lack of diligence, and he asserts that he was diligent in pursuing his claims and that any delay in bringing the petition to reinvest jurisdiction should be forgiven inasmuch as petitioner was pursuing other postconviction relief that had strict time limits within which he had to file. Furthermore, he argues that failing to reinvest jurisdiction in the circuit court will result in a miscarriage of justice.

What petitioner overlooks, however, is that only one of his proposed bases for relief—the medical report from Arkansas Children’s Hospital—was denied based solely on diligence. As to the first three pieces of evidence that were allegedly withheld—the audio and video tapes of witness interviews, evidence of an illegal search, and evidence of prior false rape allegations made by the victim³—we held

²As noted in *Sanders*, the other three categories are insanity at the time of trial, a coerced guilty plea, or a third-party confession to the crime during the time between conviction and appeal.

³We also noted that much of petitioner’s argument on this piece of evidence was an attack on the trial court’s ruling that the evidence was inadmissible under Arkansas’s rape-shield laws. *Pinder*, 2011 Ark. 401, at 4 n.4. Such attacks are allegations of trial error, which should have been raised at trial and on direct appeal, and are not cognizable in a petition for writ of error coram nobis. See *Fudge v. State*, 2010 Ark. 426.

that those items “were known, or could have been known, to him at trial.” *Pinder*, 2011 Ark. 401, at 3. Regarding the accurate trial record that petitioner alleged that the State withheld from him, we determined that “[b]y definition, the trial record cannot be extrinsic to itself.” *Id.* at 4. As to the fifth piece of evidence, an email sent to the victim by her boyfriend, we found that petitioner did not establish that the email existed at the time of petitioner’s trial. *Id.* at 5.

Based on these findings, we held that none of these pieces of evidence would warrant coram nobis relief, because, 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. *See Dickerson v. State*, 2011 Ark. 247 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam). Furthermore, the fact must have been unknown to the petitioner through no fault of his own, and he must demonstrate that, had the fact been known at trial, it would have prevented the rendition of judgment against the petitioner. *See Sanders*, 374 Ark. 70, 285 S.W.3d 630.

Finally, in explaining why petitioner was not entitled to coram nobis relief on his claim that the State withheld a medical report written by Dr. Jerry Jones at Arkansas Children’s Hospital based on a January 18, 2002 examination of the victim, we wrote:

Although there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief. Due diligence requires that (1) the defendant be unaware of the fact at the time of the trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; and (3) the defendant, after discovering the fact, did not delay in bringing the petition. Petitioner admits that he has known of this report since November 2003, yet his petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis was not filed with this court until May 16, 2011, seven-and-one-half years later. He has offered no explanation for this delay. In the absence of a valid excuse for delay, a coram nobis petition is subject to denial. Petitioner has fallen far short of demonstrating diligence vis-a-vis this medical report.

Pinder, 2011 Ark. 401, at 5 (internal citations omitted). In his motion for reconsideration, petitioner now offers an excuse for the delay, arguing that the time limits for filing a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2002) and a petition for habeas corpus relief in federal court, as well as the time limits for filing appeals in the event that those petitions were denied, took precedence over his pursuing coram nobis relief. Thus, argues petitioner, because his pursuit of those other remedies was exhausted on November 15, 2010, he was diligent in pursuing these claims when he filed his petition in this court on May 16, 2011. We disagree.

We have previously held that “the due-diligence requirements are a sequence of events, each of which a petitioner must show to prove due diligence.” *Flanagan v. State*, 2010 Ark. 140. The third factor clearly requires that, “the defendant, after discovering the fact, did not delay in bringing the petition.” *Id.* Petitioner points to no authority in support of the proposition that pursuing other types of postconviction relief, such as a petition under Rule 37.1 or a petition for writ of habeas corpus in federal court, will excuse a delay in pursuing coram nobis relief. This court need not address an argument unsupported by citation to authority or convincing argument. *James v. State*, 2010 Ark. 486 (per curiam) (citing *Taylor v. State*, 2010 Ark. 372, 372 S.W.3d 769).

Moreover, we note that, even if petitioner had been diligent with respect to this claim, the medical report that petitioner alleges was improperly withheld from the defense at trial indicated that sexual abuse was suspected, that there were physical findings that were suspicious or “suggestive of sexual abuse,” and that the results of the

physical exam were consistent with the victim's description of what petitioner had done to her. A medical report that supported the ultimate conclusion of the jury would not have prevented rendition of the judgment against petitioner had it been introduced, and it would not warrant coram nobis relief. *See Sanders*, 374 Ark. 70, 285 S.W.3d 630.

Based on all of the foregoing, petitioner has failed to establish that this court should reconsider its denial of his petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. Accordingly, the motion for reconsideration is denied.

Motion denied.