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SUPREME COURT OF ARKANSAS

No. CACR 07-276

LAVELLE EVANS PETITIONER V. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered** April 12, 2012 PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [UNION COUNTY CIRCUIT COURT, NO. CR-05-226] PETITION DENIED.

PER CURIAM

In 2006, petitioner Lavelle Evans was found guilty by a jury of two counts of possession of a controlled substance with intent to deliver, being a felon in possession of a firearm, simultaneous possession of drugs and firearms, and maintaining a drug premise. He was sentenced as a habitual offender to an aggregate sentence of 960 months' imprisonment. The Arkansas Court of Appeals affirmed. *Evans v. State*, CACR 07-276 (Ark. App. Feb. 6, 2008) (unpublished).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis challenging the judgement.[1] 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

[1]The petition was assigned the docket number for the direct appeal of the judgment of conviction, CACR 07-276.

permission. *Martin v. State*, 2012 Ark. 44 (per curiam); *Williams v. State*, 2011 Ark. 541 (per curiam); *Pinder v. State*, 2011 Ark. 401 (per curiam); *Dickerson v. State*, 2011 Ark. 247 (per curiam); *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. *Martin*, 2012 Ark. 44; *Williams*, 2011 Ark. 541; *Pinder*, 2011 Ark. 401; *Rayford v. State*, 2011 Ark. 86 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Fudge*, 2010 Ark. 426; *Barker v. State*, 2010 Ark. 354, 373 S.W.3d 875; *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. *Martin*, 2012 Ark. 44; *Pinder*, 2011 Ark. 401; *Cloird v. State*, 2011 Ark. 303 (per curiam); *Smith v. State*, 2011 Ark. 306 (per curiam); *Biggs v. State*, 2011 Ark. 304 (per curiam); *Grant*, 2010 Ark. 286, 365 S.W.3d 894; *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam); *Cloird v. State*, 357 Ark. 446, 182

S.W.3d 477 (2004). The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Martin*, 2012 Ark. 44; *Pinder*, 2011 Ark. 401; *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. *Martin*, 2012 Ark. 44; *Cloird*, 2011 Ark. 303; *Smith*, 2011 Ark. 306; *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); *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

Petitioner's sole ground for issuance of the writ is the claim that one of the jurors at his trial was biased. We find no basis for a writ of error coram nobis and deny the relief sought.

We first note that petitioner raises the claim of juror bias in his petition, but he does not expand on the allegation, apparently because he has appended a copy of the petition that he intends to file in the trial court which contains his explanation of the claim. We have held that all claims must be raised in the petition to this court. *See O'Neal v. State*, CR 95-148 (Ark. Feb. 10, 2005) (unpublished per curiam). Nevertheless, in the interest of judicial economy and because the trial-court petition is appended to the petition, rather than require petitioner to redraft his petition, we will address the claim of juror bias.

Petitioner bases his claim for error coram nobis relief on the ground that the jury foreman, John Clawson, did not inform the court in voir dire that he was a sheriff's deputy who worked with several prosecution witnesses. Petitioner also contends that Clawson had discussed the case with him earlier in Clawson's capacity as a deputy sheriff and when

escorting him to the restroom in the courthouse while Clawson was waiting "to be impaneled as a juror," had transported petitioner to and from the courthouse, had once been a bailiff in the courtroom where the trial was held, and had prior knowledge of petitioner's criminal history. Petitioner asserts that the prosecution was aware of, but did not disclose, Clawson's knowledge of the case and his bias against petitioner. Petitioner argues that the failure to disclose the information amounted to Clawson and the prosecution's having withheld "material evidence," which amounts to a "fundamental error" that warrants granting the writ.

Petitioner concedes that Clawson told the court during voir dire that he was a deputy with the Union County Sheriff's Office. It challenges credulity that petitioner and his counsel, with investigation, could not have ascertained any pertinent information about all persons in the jury pool, particularly when one of them identified himself as a deputy sheriff. More importantly, it appears that petitioner has misunderstood the scope of a coram-nobis proceeding. While the withholding by the prosecution of material evidence is a ground for the writ pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the evidence contemplated in *Brady* is "evidence material either to guilt or punishment." 373 U.S. at 87. The Court later defined the test for material evidence in the context of a *Brady* violation as being "whether there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would be different." *Strickler v. Greene*, 527 U.S. 263, 280 (1999); *see also Lacy v. State*, 2010 Ark. 388, 377 S.W.3d 277. To establish a *Brady* violation, three elements are required: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *Larimore*, 341 Ark. at

404, 17 S.W.3d at 91 (2000); *see Lee v. State*, 340 Ark. 504, 11 S.W.3d 553 (2000).

While this court has recognized that the withholding by the prosecution of material evidence is a ground for reinvesting jurisdiction in the trial court to consider a writ of error coram nobis, *see Buckley v. State*, 2010 Ark. 154, at 1 (per curiam), we have declined to extend the use of the error coram nobis remedy to a juror's allegedly misleading statements during voir dire. *See Davis v. State*, 325 Ark. 96, 925 S.W.2d 768 (1996). Here, petitioner's claim of juror bias is not cognizable as a ground for a writ of error coram nobis because it does not concern the type of evidence contemplated by *Brady*. Petitioner could have known at the time of trial any of the information that he now contends demonstrates the bias of juror Clawson, and he has not shown that there was some fundamental flaw in the proceeding against him that warrants granting the writ.

Petition denied.