

SUPREME COURT OF ARKANSAS

No. CR 00-922

CARLOS ANTHONY McFERRIN
PETITIONER

v.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered August 14, 2012

PRO SE PETITION TO REINVEST
JURISDICTION IN THE CIRCUIT
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF MISSISSIPPI
COUNTY, CHICKASAWBA DISTRICT,
CR 99-333]PETITION DENIED.

PER CURIAM

In 2000, petitioner Carlos Anthony McFerrin was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *McFerrin v. State*, 344 Ark. 671, 42 S.W.3d 529 (2001).

Now before us is petitioner's petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.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 permission. *Pinder v. State*, 2011 Ark. 401 (per curiam); *Cloird v. State*, 2011 Ark. 303 (per curiam); *Dickerson v. State*, 2011 Ark. 247 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam); *Fudge v. State*, 2010 Ark. 426 (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Davis v. State*, 2012 Ark. 228 (per curiam); *Camp v. State*, 2012 Ark. 226 (per

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

curiam); *Loggins v. State*, 2012 Ark. 97 (per curiam); *Martin v. State*, 2012 Ark. 44 (per curiam); *Cloird*, 2011 Ark. 303; *Newman v. State*, 2010 Ark. 10 (per curiam). 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. *Camp*, 2012 Ark. 226; *Pinder*, 2011 Ark. 401; *Burks v. State*, 2011 Ark. 173 (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. *Cloird*, 2011 Ark. 303; see also *Dickerson*, 2011 Ark. 247; *Cox*, 2011 Ark. 96. Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Smith v. State*, 2011 Ark. 306 (per curiam); *Rayford v. State*, 2011 Ark. 86 (per curiam); *Barker v. State*, 2010 Ark. 354, ___ S.W.3d ___; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005).

Petitioner's sole ground for the writ is the claim that the prosecution did not inform the defense that a deal had been made with prosecution witness Greg Hayward, who was petitioner's former cellmate, for Hayward's testimony that petitioner had told Hayward about the robbery and murder. He contends that Hayward was rewarded for making the deal with leniency for Hayward's own criminal acts. Petitioner states that he was unaware at trial that such a deal had been made. Petitioner presents the claim as one providing substantial evidence of a violation of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963).

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. *Camp*, 2012 Ark. 226; *Webb v. State*, 2009 Ark. 550 (per curiam). Allegations of a *Brady* violation fall within one of the four categories of error that this court has recognized. *Camp*, 2010 Ark. 226; *Hogue v. State*, 2011 Ark. 496 (per curiam). The fact that a petitioner alleges a *Brady* violation alone is not sufficient to provide a basis for error-coram-nobis relief. *Camp*, 2010 Ark. 226. Assuming that the alleged 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. *Id.* 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.* It is a petitioner's burden to show that the writ is warranted. *Scott v. State*, 2009 Ark. 437 (per curiam). This court will grant permission for a petitioner to proceed with a petition for writ of error coram nobis only when it appears that the proposed attack on the judgment is meritorious. *Hogue*, 2011 Ark. 496. We are not required to accept the allegations in a petition for writ of error coram nobis at face value. *Goff v. State*, 2012 Ark. 68, ___ S.W.3d ___ (per curiam).

We do not find that petitioner has stated a ground for the writ. First, petitioner offers nothing to show that there was a hidden deal to induce Hayward to testify. Moreover, it is apparent from the information presented by petitioner himself and from an examination of the record that the testimony by Hayward was entirely favorable to the defense. While Hayward

Cite as 2012 Ark. 305

testified as a prosecution witness, he denied that petitioner had told him anything about the robbery and murder. When the prosecution offered an unidentified document to refresh Hayward's memory, Hayward declared that whatever was in the document was a lie. The prosecution never asked Hayward about the document's contents nor sought to introduce it into evidence. Clearly, petitioner has not demonstrated that he was prejudiced by Hayward's testimony or that the judgment would not have been rendered if the jury knew of a deal between the prosecution and the witness, whose testimony was not inculpatory.

We further find that petitioner did not exercise due diligence in bringing his claim. 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. *Flanagan v. State*, 2010 Ark. 140 (per curiam); *Deaton v. State*, 373 Ark. 605, 285 S.W.3d 611 (2008). 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. *Pinder v. State*, 2012 Ark. 45. Petitioner does not state when he learned of the hidden deal involving Hayward, and he gives no explanation for the fact that he waited for nearly twelve years to assert that there was such a deal that somehow prejudiced him. In the absence of a valid excuse for delay, a coram-nobis petition is subject to denial. *Id.*

Petition denied.

Carlos Anthony McFerrin, pro se appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.