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**SUPREME COURT OF ARKANSAS**

No. CR-08-1046

ALVIN ROBINSON

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

**Opinion Delivered** September 27, 2012

PRO SE PETITION FOR WRIT OF CERTIORARI AND TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [PULASKI COUNTY CIRCUIT COURT, NO. CR 07-4392]

PETITION DENIED.

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**PER CURIAM**

In 2008, petitioner Alvin Robinson was found guilty by a jury of possession of a firearm by a felon as a result of his involvement in a shooting outside a nightclub. He was sentenced as a habitual offender to 612 months' imprisonment. The Arkansas Court of Appeals affirmed. *Robinson v. State*, 2009 Ark. App. 647.

Now before us is petitioner's pro se petition in which he seeks a writ of error coram nobis or certiorari so that the trial court can "consider belated Rule 37 petition on the question presented and for interpretation of new federal precedent found in *Martinez v. Ryan* and clarification of application to Arkansas law and procedure."<sup>1</sup> For reasons set out later in this opinion, *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), to which petitioner refers,

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<sup>1</sup>For clerical purposes, the petition was assigned the same docket number as the direct appeal.

does not provide him with the remedy he seeks.

A prisoner who appealed his judgment and who wishes to attack that judgment by means of a petition for writ of error coram nobis must first request that this court reinvest jurisdiction in the trial court. *Anderson v. State*, 2012 Ark. 270, 423 S.W.3d 20 (per curiam); *Martin v. State*, 2012 Ark. 44 (per curiam) (citing *Kelly v. State*, 2010 Ark. 180 (per curiam)). A petition in this 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 this court grants permission. *Cox v. State*, 2011 Ark. 96 (per curiam).

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 v. State*, 2011 Ark. 496. This burden is a heavy one, for a writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Williams v. State*, 2011 Ark. 541 (per curiam); *Whitham v. State*, 2011 Ark. 28 (per curiam); *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 894 (per curiam).

Coram-nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Biggs v. State*, 2011 Ark. 304 (per curiam). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Coley v. State*, 2011 Ark. 540 (per curiam).

The remedy 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. *Hogue*, 2011 Ark. 496; *McCoy v. State*, 2011 Ark. 13 (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. *Martin*, 2012 Ark. 44. Petitioner has failed to state a ground on which a writ of error coram nobis or certiorari is warranted.

This court has previously recognized that a writ of error coram nobis was available to address errors found in 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). Petitioner's claim that he is entitled to a belated proceeding pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011) on grounds that he was denied effective assistance of counsel is not one of the grounds included in the categories recognized as grounds for the writ. This court has consistently held that allegations of ineffective assistance of counsel are not cognizable in a coram nobis proceeding. *Rodgers v. State*, 2012 Ark. 193 (per curiam); *Martin v. State*, 2012 Ark. 44; *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; *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

With respect to petitioner's request that a writ of certiorari be issued, petitioner has also failed to demonstrate that the holding in *Martinez v. Ryan*, 132 S. Ct. 1309, warrants issuance of a writ of certiorari. In *Martinez*, the Supreme Court held that, when State law requires a prisoner to use a collateral attack rather than a direct appeal to raise a claim that his trial attorney was not effective under the Sixth Amendment, the prisoner's failure to

comply with State rules in bringing his collateral attack on the judgment will no longer bar a federal judge from granting habeas relief on that claim, if the prisoner had no attorney to represent him in the collateral proceeding or that attorney was ineffective and if the petition filed in the State court had a meritorious claim. *Martinez*, therefore, does not provide grounds for a writ of certiorari in this court.<sup>2</sup>

Moreover, petitioner here could have filed a motion for new trial or a timely petition for postconviction relief under Rule 37.1 in the trial court to bring his claims of ineffective assistance of counsel. When there is another remedy available, a writ of certiorari will not be granted. *McKenzie v. Pierce*, 2012 Ark. 190, 403 S.W.3d 565.

Petition denied.

*Alvin Robinson*, pro se appellant.

No response.

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<sup>2</sup>The United States Court of Appeals for the Eighth Circuit has held that *Martinez* does not apply to cases brought under Arkansas law because Arkansas law allows a petitioner to assert in a motion for new trial and on the record on direct appeal that he was denied effective assistance of trial counsel. *Dansby v. Norris*, 682 F.3d 711 (8th Cir. 2012).