

SUPREME COURT OF ARKANSAS

No. CACR 02-864

JASON E. WINBUSH
PETITIONER
V.
STATE OF ARKANSAS
RESPONDENT

Opinion Delivered October 11, 2012

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT, NO. CR-01-553]

PETITION DENIED.

PER CURIAM

In 2002, petitioner Jason E. Winbush was found guilty by a jury of murder in the first degree and sentenced to 540 months' imprisonment. The Arkansas Court of Appeals affirmed. *Winbush v. State*, 82 Ark. App. 365, 107 S.W.3d 882 (2003).

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.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. *McFerrin v. State*, 2012 Ark. 305 (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

¹The petition was assigned the docket number for the direct appeal of the judgment of conviction, No. CACR-02-864.

S.W.3d 849 (per curiam) (citing *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61); *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. *Anderson v. State*, 2012 Ark. 270, 423 S.W.3d 20 (per curiam); *Coley v. State*, 2011 Ark. 540 (per curiam); *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 865; *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. *Coley*, 2011 Ark. 540 (citing *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam)). We have held that a writ of error coram nobis is 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. *McFerrin*, 2012 Ark. 305; *Coley*, 2011 Ark. 540; *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 849; *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. *Williams*, 2011 Ark. 541;

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. *Carter v. State*, 2012 Ark. 186 (per curiam); *Coley*, 2011 Ark. 540; *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 the writ is the claim that the evidence adduced at trial was insufficient to sustain the judgment, which was also one of petitioner's grounds for relief on direct appeal. It appears that petitioner may have misunderstood the scope of a coram nobis proceeding. The sufficiency of the evidence is a matter to be settled at trial and on direct appeal. It is not an issue cognizable in coram nobis proceedings. *Butler v. State*, 2011 Ark. 542; see *Cooper v. State*, 2012 Ark. 471 (per curiam); *Martin v. State*, 2012 Ark. 44 (per curiam); *Grant*, 2010 Ark. 286; *Flanagan v. State*, 2010 Ark. 140 (per curiam). Any issue that was known at the time of trial and was addressed, or could have been addressed, does not fall within the purview of an error coram nobis proceeding. *Anderson*, 2012 Ark. 270, 423 S.W.3d 20. This applies even to issues of trial error of constitutional dimension that could have been raised in the trial court. *Rodgers v. State*, 2012 Ark. 193 (per curiam); *Martin*, 2012 Ark. 44. As petitioner has not stated a ground to issue a writ of error coram nobis, the petition is denied.

Petition denied.

Jason E. Winbush, pro se appellant.

No response.