

SUPREME COURT OF ARKANSAS

No. CACR 08-616

WALTER J. SIMS

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered December 6, 2012

PRO SE PETITION TO REINVEST
JURISDICTION IN THE CIRCUIT
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[JEFFERSON COUNTY CIRCUIT
COURT, CR 05-937]

PETITION DENIED.

PER CURIAM

In 2008, petitioner Walter J. Sims was found guilty by a jury of first-degree murder and sentenced to 600 months' imprisonment. The Arkansas Court of Appeals affirmed. *Sims v. State*, 2009 Ark. App. 99 (unpublished).

After the judgment was affirmed, petitioner sought postconviction relief in the trial court in a petition pursuant to Arkansas Rule of Criminal Procedure 37.1 (2009). The petition was dismissed. On appeal, this court dismissed the appeal on the ground that the Rule 37.1 petition was not timely filed. *Sims v. State*, 2011 Ark. 135 (per curiam).

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. *Rodriguez v. State*,

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

2012 Ark. 403 (per curiam); *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. *Wimbush v. State*, 2012 Ark. 392 (per curiam); *Davis v. State*, 2012 Ark. 228 (per curiam); *Camp v. State*, 2012 Ark. 226 (per 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); *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (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).

The sole ground for relief raised by petitioner in the instant petition is that the evidence was not sufficient to sustain the judgment-and-commitment order. 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). The issue of the sufficiency of the evidence is not cognizable in a coram-nobis proceeding. *Smith v. State*, 2012 Ark. 403 (per curiam); *Butler v. State*, 2011 Ark. 542; *Grant v. State*, 2010 Ark. 286, ___ S.W.3d ___ (per curiam). The sufficiency of the evidence and the credibility of witnesses are matters to be addressed at trial. *See Martin*, 2012 Ark. 44; *see also Cooper v. State*, 2012 Ark. 471 (per curiam); *Grant*, 2010 Ark. 286, ___ S.W.3d ___; *Flanagan v. State*, 2010 Ark. 140 (per curiam).

Petition denied.

Walter J. Sims, pro se appellant.

No response.