

SUPREME COURT OF ARKANSAS

No. CACR 05-600

STEVEN SPARKS

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered December 13, 2012

PRO SE PETITION TO REINVEST
 JURISDICTION IN THE TRIAL COURT
 TO CONSIDER A PETITION FOR WRIT
 OF ERROR CORAM NOBIS
 [WASHINGTON COUNTY CIRCUIT
 COURT, CR 04-323]

PETITION DENIED.**PER CURIAM**

The Arkansas Court of Appeals affirmed petitioner Steven Sparks's conviction on three counts of rape and three counts of terroristic threatening. *Sparks v. State*, CACR 05-600 (Ark. App. June 27, 2007) (unpublished). Petitioner then filed a timely petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2007) that was denied. This court affirmed the denial of postconviction relief. *Sparks v. State*, 2009 Ark. 260 (per curiam) (unpublished). Petitioner has now filed a petition that requests that this court reinvest jurisdiction in the trial court in order that he may proceed with a petition for writ of error coram nobis.¹ We deny the petition because petitioner fails to show that the claims that he would raise in his proposed attack on the judgment are meritorious.

A prisoner who appealed his judgment and who wishes to attack his conviction by means of a petition for writ of error coram nobis must first request that this court reinvest jurisdiction

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

in the trial court. *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). This court will grant permission to proceed with a petition for the writ only when it appears that the proposed attack on the judgment is meritorious. *Whitham v. State*, 2011 Ark. 28 (per curiam).

It is a petitioner's burden to show that the writ is warranted. *Smith v. State*, 2012 Ark. 403 (per curiam). 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. *Anderson v. State*, 2012 Ark. 270, ___ S.W.3d ___ (per curiam). The remedy in a proceeding for a writ of error coram nobis 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. *Burks v. State*, 2011 Ark. 173 (per curiam). To warrant a writ of error coram nobis, a petition must bring forth some fact, extrinsic to the record, that was not known at the time of trial. *Pinder v. State*, 2011 Ark. 401 (per curiam).

Petitioner claims that the prosecution withheld evidence of reports and transcripts of the victims' statements, and he alleged that this was a violation of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963). Some allegations of a *Brady* violation may fall within one of the four categories of error that this court has previously recognized as grounds for the writ. *Lee v. State*, 2012 Ark. 401 (per curiam). Petitioner did not, however, demonstrate that these materials

were withheld by the prosecution. Based on statements made on the record at trial and additional statements contained in the record in petitioner's proceedings for postconviction relief in the case, the materials that petitioner asserts were suppressed were available to the defense at the time of trial. Petitioner states no evidence that he would present in error-coram-nobis proceedings in support of his allegation that the materials were somehow suppressed by the prosecution prior to trial.

In order to establish a *Brady* violation, petitioner must establish that evidence was suppressed by the State, either willfully or inadvertently. *Smith*, 2012 Ark. 403. Where a petitioner offers nothing to show that information was concealed from the defense, and the issue could have been determined with certainty at the time of trial, the petitioner has not demonstrated a *Brady* violation that warrants issuance of a writ of error coram nobis. *Id.*

Here, trial counsel referenced both the reports and the statements that petitioner alleges were withheld in cross-examination of the victims, and he used the information to point out inconsistencies in the testimony at trial. In counsel's testimony at the hearing on the Rule 37.1 petition, he referenced the fact that he had a copy of the reports and saw no reason to request the actual original reports. Petitioner's claim that the materials were not made available to his defense does not appear meritorious.

Moreover, even if petitioner could demonstrate that there were alternate versions of the documents that were not made available to counsel, he has stated no facts that would support a claim that this evidence was of the sort that would demonstrate a *Brady* violation. In order to establish a *Brady* violation, the allegedly withheld evidence must be favorable to the accused,

either because it is exculpatory or because it is impeaching, and its suppression must have been prejudicial to the defense. *See Smith*, 2012 Ark. 403. The allegedly suppressed reports and statements attached to the petition were not favorable to the defense, and suppression would not have resulted in prejudice to petitioner. Although petitioner asserts that, in contradiction to the testimony, only two of the victims provided initial statements, the copies of the reports that petitioner attached to the petition indicate otherwise. Other inconsistencies that petitioner points to, despite his assertions to the contrary, were simply not persuasive, considered in conjunction with the evidence presented at trial, for discrediting the victims' testimony. The copies of reports and transcripts that petitioner appears to allege were withheld do not contain any additional information, aside from the information that counsel obviously had, that might have allowed more effective cross-examination of the victims. In sum, petitioner has not presented a meritorious claim to establish a *Brady* violation.

Petitioner has not shown that he could meet his burden to demonstrate that the writ is warranted, and, as a consequence, he has not shown that his proposed attack on the judgment is meritorious. While the State has also challenged the proposed petition on other bases, including a lack of diligence in raising the claim, we do not need to consider any additional basis to deny the petition.² Even if diligent in bringing the claim, petitioner has not demonstrated that the claim is one that would support issuance of the writ.

Petition denied.

Steven Sparks, pro se petitioner.

No response.

²Petitioner alleged ineffective assistance of counsel, medical conditions, and circumstances of his incarceration as reasons for delay.