

SUPREME COURT OF ARKANSAS

No. CACR04-176

THEODIS KELLY

PETITIONER

v.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered May 2, 2013PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM
NOBIS [PHILLIPS COUNTY CIRCUIT
COURT, CR 99-238]PETITION DISMISSED.**PER CURIAM**

In 2003, a jury found petitioner Theodis Kelly guilty of first-degree murder in the shooting death of Shakeyia Miller. He was sentenced to 720 months' imprisonment. The Arkansas Court of Appeals affirmed. *Kelly v. State*, CACR04-176 (Ark. App. Dec. 15, 2004) (unpublished).

In 2010, petitioner filed a petition in this court seeking to have jurisdiction reinvested in the trial court to consider a petition for writ of error coram nobis. The petition was denied. *Kelly v. State*, 2010 Ark. 180 (per curiam). Now, approximately two years after the petition was denied, petitioner again seeks leave to have jurisdiction reinvested in the trial court to consider a coram-nobis petition.¹ Petitioner raises the same allegation in this second petition as in the first. That is, he contends that the prosecution withheld a statement made by Dana Ewing that she had spoken to the dying victim immediately after the victim was shot

¹As with the first such petition, the petition was assigned the same docket number as the direct appeal in the case.

and had been told by the victim that the shooting was accidental. In his first coram-nobis petition, petitioner explained that he learned of Ewing's statement through another person who had overheard Ewing's cousin discussing the case. In the instant petition, petitioner does not explain how he learned about Ewing's alleged statement.

A court has discretion to determine whether the renewal of a petitioner's application for the writ, when there are additional facts presented in support of the same grounds, will be permitted. *O'Neal v. State*, 2010 Ark. 425 (per curiam) (citing *Jackson v. State*, 2009 Ark. 572 (per curiam)); see *People v. Sharp*, 320 P.2d 589 (Cal. Ct. App.1958) (denial of the writ of error coram nobis is not res judicata; it is within the sound discretion of the court whether renewal of the application, on the same ground but with an adequate statement of facts, will be permitted); see also *United States v. Camacho-Bordes*, 94 F.3d 1168 (8th Cir. 1996) (res judicata did not apply to bar a second petition for writ of error coram nobis, but abuse-of-writ doctrine was applied to subsume res judicata).

Petitioner's successive application for coram-nobis relief in this court is an abuse of the writ in that he alleges no fact sufficient to distinguish his claim in the instant petition from the claim in the first. In fact, he has presented the same claim in this second petition in a less developed form with fewer facts to support it. He did not establish in the first petition that there was any basis for the writ, and his reassertion of the same claim in the second petition is a misuse of the remedy. The petition is therefore dismissed.

Petition dismissed.

Theodis Kelly, pro se appellant

No response.