

Cite as 2018 Ark. 37
SUPREME COURT OF ARKANSAS
No. CR-02-228

JAMES E. SMITH

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered February 8, 2018

PRO SE SIXTH PETITION TO
REINVEST JURISDICTION IN THE
TRIAL COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [JEFFERSON COUNTY
CIRCUIT COURT, NO. 35CR-99-724]

PETITION DENIED.

JOSEPHINE LINKER HART, Associate Justice

Petitioner James E. Smith, who was convicted in 2003 of two counts of rape, brings this pro se sixth petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. He contends that (1) his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), were violated; (2) the bench/arrest warrant was invalid because it was not signed by a judge; and (3) trial counsel was ineffective. Because Smith has not demonstrated in the petition that the writ should issue, the petition is denied.

The trial court cannot entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal unless this court grants permission. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. A writ of error coram nobis is an extraordinarily rare remedy. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings

are attended by a strong presumption that the judgment of conviction is valid. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524. 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 trial court and that, through no negligence or fault of the defendant, was not brought forward before rendition of the judgment. *Newman*, 2009 Ark. 539, 354 S.W.3d 61. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771.

The writ is allowed under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Id.* A writ of error coram nobis is available for addressing certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38. A court is not required to accept the allegations in a petition for writ of error coram nobis at face value. *Jackson v. State*, 2017 Ark. 195, 520 S.W.3d 242.

I. *Miranda* Warnings

Smith argues that his conviction was obtained through the perjured testimony of Detective Hill, primarily based on his assertions that she did not advise him of any *Miranda* rights when she testified that she did. Specifically, he alleges that he did not sign the waiver form on July 21, 1999, but rather, signed it on August 18, 1999, and that the form was backdated to July 21, 1999. Nevertheless, Smith does not make any assertion that the

facts surrounding the signing of his *Miranda* rights form were facts of which he was unaware at the time of trial. Moreover, Smith has offered no proof that the State knowingly utilized false testimony or suborned perjury, and we have held that a petitioner's allegation that a witness gave false testimony at trial, in and of itself, does not give rise to a showing of a fundamental error that requires issuance of the writ. *Chatmon v. State*, 2017 Ark. 229. The writ of error coram nobis does not lie to correct an issue of fact that has been adjudicated or for alleged false testimony at trial. *Id.*

Additionally, with these claims regarding the signing of the *Miranda* rights form, Smith also challenges Hill's testimony with respect to when he was arrested, as he alleges he did not sign the *Miranda* rights form until after he had been arrested—not when he gave his statements as indicated by Detective Hill's testimony and the time and date the rights form was signed. As noted previously, Smith does not make any assertion that the facts surrounding his arrest were facts of which he was unaware at the time of trial. See *Biggers v. State*, 317 Ark. 414, 878 S.W.2d 717 (1994) (holding that even an illegal arrest, standing alone, does not vitiate a valid conviction). Smith fails to demonstrate that the writ should issue because he failed to establish an error of fact extrinsic to the record that could not have been raised in the trial court. *Roberts*, 2013 Ark. 56, 425 S.W.3d 771.

II. Bench/Arrest Warrant

In this Smith's sixth petition for a writ of coram nobis, he again argues that his arrest was illegal because no judge had signed the bench warrant for his arrest. In his fourth petition, we held that this allegation was not a cognizable ground for granting coram nobis

relief. *Smith v. State*, 2016 Ark. 201, at 4-5, 491 S.W.3d 463, 466 (per curiam). Smith also raised this same allegation in his fifth petition, which was dismissed by this court on August 3, 2017, without written opinion. However, because Smith has again raised this issue without citing additional facts, we hold that this argument violates the abuse-of-the-writ doctrine. *Davis v. State*, 2016 Ark. 296, 498 S.W.3d 279 (per curiam) (citing *United States v. Camacho-Bordes*, 94 F.3d 1168 (8th Cir. 1996)). Accordingly, we decline to further address this issue.

III. *Ineffective Assistance of Counsel*

In making his claims, Smith contended that his trial counsel was ineffective. Specifically, Smith claimed that counsel's statements indicating a "relationship" with Detective Hill demonstrated that counsel rendered ineffective assistance because trial counsel was aware that Detective Hill perjured herself and that trial counsel did not listen to Smith when Smith advised counsel that he had not been read his *Miranda* rights. This court has repeatedly held that ineffective-assistance-of-counsel claims are not grounds for the writ. *Green*, 2016 Ark. 386, 502 S.W.3d 524. Claims of ineffective assistance of counsel are properly raised in a timely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2017). *Williams v. State*, 2017 Ark. 313, 530 S.W.3d. 844. A petition for error coram nobis is not a substitute for raising an issue under Rule 37.1. *Green*, 2016 Ark. 386, 502 S.W.3d 524. Smith has failed to demonstrate that the writ should issue.

Petition denied.