

Cite as 2009 Ark. 365 (unpublished)

ARKANSAS SUPREME COURT

No. CR 84-54

TIMOTHY ELLIS McDANIEL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered June 18, 2009

PRO SE MOTION FOR
RECONSIDERATION OF DENIAL
OF PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF GARLAND COUNTY, CR 81-135]

MOTION DENIED.

PER CURIAM

This court affirmed petitioner Timothy Ellis McDaniel's conviction for first-degree murder and sentence of life imprisonment. *McDaniel v. State*, 283 Ark. 352, 676 S.W.2d 732 (1984) (decision subsequent to remand for separate trials in *McDaniel v. State*, 278 Ark. 631, 648 S.W.2d 57 (1983)). Petitioner filed a petition in this court in which he requested permission to proceed in the trial court with a petition for writ of error coram nobis.¹ We denied the petition. *McDaniel v. State*, CR 84-54 (Ark. Apr. 23, 2009) (unpublished per curiam). Petitioner has now filed a motion for reconsideration of that decision.

¹For clerical purposes, the petition was assigned the same docket number as the direct appeal. After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).



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In his petition, petitioner asserted as a basis for reinvesting jurisdiction in the trial court that he was not given a psychiatric evaluation before trial. Petitioner now asserts that he was not competent when the crime was committed or during trial, that the trial court wrongly denied him a mental evaluation, that he was interrogated by police without being advised of his right to counsel, that a witness was improperly excluded from providing testimony, and that a case cited by the State in its response to his petition is distinguishable because he did not receive a competency evaluation.

We denied the petition because petitioner based his claim for error coram nobis relief upon the fact that petitioner was provided no competency evaluation, which would not be a fact extrinsic to the record. For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam). A writ of error coram nobis is appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

In his motion, petitioner does not point to any fact or issue that was hidden or unknown at the time of trial. His allegation that he was not competent at trial is merely conclusory, without any factual basis, and does not demonstrate that there was any issue concerning petitioner's competency that was hidden or unknown. Petitioner has not shown that his competency, or any of the new claims raised in his motion, was an issue that could



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not have been addressed at trial. Because petitioner has failed to demonstrate any basis upon which to reconsider the denial of his petition, we deny the motion.

Motion denied.

Gunter, J., not participating.