

Cite as 2018 Ark. 138
SUPREME COURT OF ARKANSAS
No. CR-17-831

JAMES EDWARD WHITNEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 26, 2018

PRO SE APPEAL FROM THE
WASHINGTON COUNTY CIRCUIT
COURT; PRO SE MOTION FOR LEAVE
TO SUBMIT BELATED REPLY BRIEF
WITH SUPPLEMENTAL ADDENDUM
[NO. 72CR-13-912]

HONORABLE MARK LINDSAY, JUDGE

AFFIRMED; MOTION MOOT.

COURTNEY HUDSON GOODSON, Associate Justice

Appellant James Edward Whitney lodged an appeal in this court from an order denying his petition for writ of coram nobis filed in the trial court. He filed a motion in which he requests permission to file a belated reply brief with a supplemental addendum. Because it is clear from the record on appeal that the trial court correctly determined that it had no authority to consider the petition that Whitney filed, we affirm the denial of relief, and Whitney's motion is moot.

The Arkansas Court of Appeals affirmed the judgment reflecting Whitney's conviction on eighteen counts of possession of child pornography on May 24, 2017. *Whitney v. State*, 2017 Ark. App. 341, 520 S.W.3d 326. Whitney filed his petition for the writ in the trial court on June 16, 2017. The trial court treated the petition as one for writ of error coram nobis, and it found that it did not have authority to consider the petition.

An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward when it is clear that the petitioner could not prevail. *Whitney v. State*, 2018 Ark. 21, 535 S.W.3d 627. In postconviction proceedings such as this, this court need not address motions such as the one Whitney filed, and those motions are moot when it is clear from the record that the denial of relief was correct because the trial court lacked authority to consider the petition that was before it. *Justus v. State*, 2012 Ark. 91.

The standard of review of an order entered by the trial court on a petition for writ of error coram nobis is whether the trial court abused its discretion in granting or denying the writ. *Griffin v. State*, 2018 Ark. 10, 535 S.W.3d 261. An abuse of discretion occurs when the court acts arbitrarily or groundlessly. *Id.* 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. *Carner v. State*, 2018 Ark. 20, 535 S.W.3d 634.

The trial court correctly treated the petition Whitney filed as one for error coram nobis relief. Arkansas Rule of Civil Procedure 60(k) specifically abolished coram vobis and audita querela actions as a procedure for obtaining relief from a judgment. Petitions for the abolished writs of error like coram vobis and audita querela are accordingly to be treated as petitions for coram nobis relief, with the same grounds for relief and procedural rules applicable. *Chestang v. State*, 2015 Ark. 372 (per curiam). Any petition for a writ of error challenging a criminal judgment of conviction in this state is clearly a petition for a

writ of coram nobis as it applies in modern law. *Id.* Such a writ for error is indistinguishable from a writ of error coram nobis. *Id.*

As this court noted in *Leggett v. State*, 231 Ark. 13, 328 S.W.2d 252 (1959), the term “coram nobis” means, literally, “before us ourselves” and “coram vobis” means “before you.” 231 Ark. 13, 17 n.5, 328 S.W.2d 252, 255 n.5. The term “writ of error coram nobis” has been recognized in our common law for all motions for new trial in a criminal case filed after the term of court has expired. *Id.* In *Leggett*, this court also recognized that the trial court was not the correct tribunal to entertain jurisdiction of the case when the judgment had been affirmed by this court and that the petitioner must obtain the permission of the Arkansas Supreme Court before applying to the trial court for a writ of error coram nobis. 231 Ark. at 17, 328 S.W.2d at 255.

At the time he filed his petition, Whitney had not sought, much less obtained, this court’s permission to reinvest jurisdiction in the trial court to file a petition for a writ of error coram nobis or any other similar relief. The record clearly demonstrates that the trial court did not abuse its discretion in declining to consider the petition Whitney had filed.

Affirmed; motion moot.

HART, J., dissents.

JOSEPHINE LINKER HART, JUSTICE, dissenting. I dissent for the reasons outlined in *Gray v. State*, 2018 Ark. 79, ___ S.W.3d ___ (Hart, J., dissenting). The only matter properly before us at this juncture is Mr. Whitney’s Motion for Extension of Time to File Belated

Reply Brief. This court does not yet have jurisdiction to rule on the merits of Mr. Whitney's case.

James Edward Whitney, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.