

Cite as 2010 Ark. 426

**SUPREME COURT OF ARKANSAS**

No. CR-99-1102

JAMES C. FUDGE

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

**Opinion Delivered:** November 4, 2010

PRO SE PETITION TO REINVEST  
JURISDICTION IN THE TRIAL  
COURT TO CONSIDER A  
PETITION FOR WRIT OF  
ERROR CORAM NOBIS  
[CIRCUIT COURT OF PULASKI  
COUNTY, CR 98-626]

PETITION DENIED.

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**PER CURIAM**

In 1999, a jury found petitioner James C. Fudge guilty of capital murder for the death of his wife, Kimberly Fudge, and sentenced him to death. This court affirmed the judgment. *Fudge v. State*, 341 Ark. 759, 20 S.W.3d 315 (2000). In later proceedings under Arkansas Rule of Criminal Procedure 37.5 (2010), the trial court granted petitioner a new sentencing hearing based on trial counsel's failure to object to evidence presented as an aggravating circumstance, and this court affirmed. *State v. Fudge*, 361 Ark. 412, 206 S.W.3d 850 (2005).<sup>1</sup>

Petitioner has now filed a pro se petition in this court in which he seeks permission to file a petition for writ of error coram nobis in the trial court.<sup>2</sup> If a prisoner who has

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<sup>1</sup> On January 24, 2006, a judgment and commitment order reflecting that petitioner received a sentence of life without parole was entered in Pulaski County Circuit Court.

<sup>2</sup>For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

appealed his judgment wishes to attack his conviction by means of a petition for writ of error coram nobis, he must first request that this court reinvest jurisdiction in the trial court. *Kelly v. State*, 2010 Ark. 180 (per curiam). A petition to reinvest jurisdiction in the trial court is necessary after a judgment has been affirmed on appeal because the circuit court may entertain a petition for the writ only after this court grants permission. *Id.* (citing *Mills v. State*, 2009 Ark. 463 (per curiam)). We decline to grant petitioner the leave that he seeks.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 894 (per curiam). The writ is appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown. *Pierce v. State*, 2009 Ark. 606 (per curiam). 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 the fact had been known to the circuit court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61.

Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Id.*, 354 S.W.3d 61. For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (per curiam). It is a petitioner's burden to show that the writ is warranted. *Scott v. State*, 2009 Ark. 437 (per curiam). This court has held that a writ of error coram nobis is available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material

evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Webb v. State*, 2009 Ark. 550 (per curiam).

The precise grounds proposed in the petition are somewhat difficult to fathom at times, stated in sentences that are not always clearly comprehensible. Because the petitioner carries the burden to show that the writ is warranted, we must be able to glean a basis for the writ from the request presented to us in order to justify reinvesting jurisdiction in the trial court for a petition for the writ. It is clear that a number of the bases raised are simply allegations of trial error asserting abuse of discretion in a number of rulings concerning trial evidence and the admission of testimony. Petitioner also asserts ineffective assistance of counsel and would challenge the trial court's ruling on a petition for scientific testing. Issues of trial error that were or could have been raised at trial are not cognizable in a coram nobis proceeding. *Flanagan v. State*, 2010 Ark. 140 (per curiam). Ineffective assistance claims are outside the purview of a coram nobis proceeding. *Grant*, 2010 Ark. 286, 365 S.W.3d 894. Extraordinary relief is not a substitute for appeal. *Jackson v. State*, 2009 Ark. 572 (per curiam).

Petitioner does frame some of the grounds as claims of evidence withheld by the prosecution, which falls within one of the four recognized categories of error. First, petitioner asserts that the prosecution withheld evidence concerning deals struck with each of three witnesses at trial. Petitioner does not state facts to support that statement; he does not indicate what arrangement he alleges had been made or point to any evidence that a deal with any one of the witnesses existed. This court will grant permission for a petitioner to proceed in the trial court with a petition for writ of error coram nobis only when it

appears the proposed attack on the judgment is meritorious. *Buckley v. State*, 2010 Ark. 154 (per curiam). In making such a determination, the court looks to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Id.* Because petitioner states no facts that would support his claim, he fails to show that the attack is meritorious.

Petitioner's next possible claims of withheld evidence concern a cassette tape of an interview with one of the witnesses and written transcripts of statements by other witnesses. Petitioner never identifies the transcripts that he claims were withheld, and the cassette tape that he references is clearly one that was made by the defense prior to trial and not one withheld from the defense by the prosecution. He therefore fails to present a meritorious proposed attack on the judgment.

Petitioner makes a number of additional claims concerning what he contends was perjured testimony presented by various witnesses. While petitioner includes allegations of withheld material, he does not identify any information that was withheld or that has suddenly come to light to discredit the testimony. Rather, the claims appear to be based upon ineffective assistance of counsel or trial errors that would have been subject to appeal, despite petitioner's characterization otherwise.

Intertwined with his other claims, petitioner alleges that the murder occurred in Lonoke County, although he was tried in Pulaski County, and that the circuit court clerk has failed to file his pro se pleadings. Any claim petitioner has concerning the circuit clerk's failure to file pleadings must first be directed to the circuit court and would not in any event be grounds for coram nobis relief. *See Meraz v. State*, 2010 Ark. 121 (per curiam). In

raising his jurisdictional claim, petitioner points to no evidence that the crime was committed outside of Pulaski County. Moreover, at trial, the evidence was that the victim was last seen alive in Pulaski County and that the body was found in Pulaski County. Even if the murder had occurred outside of Pulaski County, venue would still be proper in the county where the body was buried. *Pilcher v. State*, 303 Ark. 335, 796 S.W.3d 845 (1990).

The petition lacks any facts that would establish a proper allegation to warrant issuance of the writ. Petitioner does not show a fundamental error of fact extrinsic to the record. While it is difficult to discern the precise claims that petitioner would present, it is clear that he has not met the burden to show a meritorious claim cognizable in an error coram nobis proceeding. Accordingly, we deny the petition to reinvest jurisdiction in the trial court.

Petition denied.