Cite as 2010 Ark. 471

SUPREME COURT OF ARKANSAS

No. CR 05-818

VINCENT COOPER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 2, 2010

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [MILLER COUNTY CIRCUIT COURT, CR 2002-119]

PETITION DENIED.

PER CURIAM

In 2003, petitioner Vincent Cooper was found guilty of aggravated robbery and attempted robbery. The Arkansas Court of Appeals reversed the judgment of conviction and remanded the matter for retrial on the ground that the trial court erred in admitting in its entirety the taped statement of Ramona Bailey, the mother of appellant's child. *Cooper v. State*, CACR 03-542 (Ark. App. Apr. 14, 2004) (unpublished).

On retrial, appellant was again found guilty, and an aggregate sentence of 360 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Cooper v. State*, CACR 05-818 (Ark. App. Mar. 1, 2006) (unpublished).

Now before us is petitioner's pro se petition requesting that this court reinvest

jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] The petition for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 894 (per curiam) (citing *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61); *see also Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

We find no ground to grant the relief sought and deny the petition. While the assertions in the lengthy petition concerning the second trial are numerous and convoluted, they can be condensed into the following claims: the court and prosecutor at the first trial allowed the evidence to be contaminated and thus it could no longer yield potentially exculpatory scientific evidence for use in the second trial and postconviction proceedings; the evidence was insufficient to sustain the judgment; the prosecutor failed to correct the false testimony of witness Ramona Bailey and failed to reveal that her testimony was given in exchange for dropping a shoplifting charge against her; the trial court erred in admitting into evidence the in-court identification of petitioner as the perpetrator by the arresting officer Jody Stubbs; the prosecution and the court permitted a juror to serve who did not reveal in voir dire that she knew petitioner and Ms. Bailey and was prejudiced against him because she had knowledge of another crime he had committed; the prosecution and court permitted a

[1] For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis was assigned the same docket number as the direct appeal of the judgment, CACR 05-818.

juror to serve who worked at the Wal-Mart where petitioner also had worked and who had knowledge of his past that biased her against him.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Barker v. State*, 2010 Ark. 354, 373 S.W.3d 865; *Larimore v. State*, 341 Ark. 397, 317 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was 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. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Barker*, 2010 Ark. 354; *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). 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 circuit court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Grant*, 2010 Ark. 286 (citing *Newman*, 2009 Ark. 539); *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam).

It is clear that the issues raised by appellant concerning the handling of the evidence at the first trial, the testimony and questioning of Ramona Bailey, the testimony of Officer Stubbs, and the service of the two jurors were matters known at the time of the second trial.

As such, the issues either were, or could have been, addressed then. Assertions pertaining to matters known at trial are not cognizable in a coram nobis proceeding. *Scott v. State*, 2010 Ark. 363 (per curiam).

With respect to petitioner's contention that the evidence was insufficient to sustain the judgment, the sufficiency of the evidence is a matter to be addressed at trial and on record on direct appeal. A coram nobis proceeding does not afford a petitioner another opportunity to challenge the sufficiency of the evidence adduced at trial. *Grant*, 2010 Ark. 286; *Flanagan v. State*, 2010 Ark. 140 (per curiam).

Petitioner also contends that he has new evidence in the form of an affidavit from Keith Moore in which Moore avers that Moore was told by another man that the other man had committed the offenses of which petitioner was convicted. A claim of newly discovered evidence in itself is not a basis for coram nobis relief. *Scott*, 2010 Ark. 363; *Webb v. State*, 2009 Ark. 550 (per curiam) (citing *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam)). There is a distinction between fundamental error that requires issuance of the writ and newly discovered information that might have created an issue to be raised at trial had it been known. *Mosley v. State*, 333 Ark. 273, 968 S.W.2d 612 (1998) (per curiam). At most, petitioner has shown that Keith Moore was told by someone else that petitioner had not committed the crime. The statement was hearsay, and even if it had been known at the time of trial, petitioner has not shown that it would somehow have created an issue sufficient to call into question the outcome of the trial. He has not shown that there is newly discovered

evidence sufficient to have precluded the entry of the judgment.

Petition denied.