

SUPREME COURT OF ARKANSAS

No. CR 05-751

EDDY STANLEY HARRIS, JR.
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 9, 2010

PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS, PULASKI COUNTY
CIRCUIT COURT, CR 2003-2315

PETITION DENIED.

PER CURIAM

This court affirmed a judgment reflecting the 2005 conviction of petitioner Eddy Stanley Harris, Jr., and the resulting sentence of life without parole for two counts of capital murder. *Harris v. State*, 366 Ark. 190, 234 S.W.3d 273 (2006). We subsequently affirmed denial of petitioner's petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2006). *Harris v. State*, CR 07-1247 (Ark. June 26, 2008) (unpublished per curiam).

Petitioner now brings in this court a petition requesting permission to file a petition for writ of error coram nobis in the trial court.¹ A prisoner who appealed his judgment and who wishes to attack his conviction by means of a petition for writ of error coram nobis must first request that this court reinvest jurisdiction in the trial court. *Kelly v. State*, 2010 Ark. 180

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

(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)).

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). 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). It is a petitioner's burden to show that the writ is warranted. *Scott v. State*, 2009 Ark. 437 (per curiam). Petitioner has failed to carry that burden, and we deny the petition.

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.* 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).

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). Petitioner alleges in this case that there was material evidence withheld by the prosecutor. Petitioner contends that the State withheld information concerning one of the witnesses, Ms. Johilda Harris. Petitioner alleges that the information included an extensive criminal history, that Johilda worked as a paid informant for the police, and that Johilda was paid to testify against petitioner.

That petitioner alleges violations of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963), is not alone sufficient to provide a basis for error coram nobis relief. To establish a *Brady* violation, three elements are required: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *State v. Larimore*, 341 Ark. 397, 404, 17 S.W.3d 87, 91 (2000). In *Newman*, this court recognized that the cumulative effect of the suppressed evidence is considered to determine whether the allegedly suppressed evidence was material to the guilt or punishment of the individual. 2009 Ark. 539, 354 S.W.3d 61.

Assuming that withheld evidence meets these threshold requirements and is both material and prejudicial, in order to justify issuance of the writ, the withheld material evidence must also be such as to have prevented rendition of the judgment had it been known at the time of trial. To merit relief, a petitioner must demonstrate that there is a reasonable

probability that the judgment of conviction would not have been rendered, or would have been prevented, had the information been disclosed at trial. *Buckley*, 2010 Ark. 154.

In order to carry his burden to show that the writ is warranted, petitioner must demonstrate that, had the evidence that he alleges was withheld concerning Johilda been available, it would have been sufficient to have prevented rendition of the judgment. Johilda's testimony was simply not so critical to the prosecution's case, despite petitioner's characterization of her testimony as "key." As we noted in our opinion affirming denial of petitioner's Rule 37.1 petition, Johilda's husband testified to much of the same information. In our opinion on direct appeal, we detailed substantial additional evidence linking petitioner and his accomplice to the murders, including testimony of discussions between petitioner and his accomplice planning the robbery, calls to the victim's phone, and petitioner's accomplice offering money for a ride away from the area at the time the murders occurred.

In determining if the proposed attack on the judgment is meritorious, this court looks to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Buckley*, 2010 Ark. 154. Petitioner asserts in his petition that there is a reasonable probability that he would not have been convicted if the alleged withheld material had been available. That allegation is dubious because the cumulative effect of the withheld materials would have discredited only Johilda's testimony, and Johilda's testimony was not crucial to the State's case.

In its response to the petition, the State asserts that the petition was untimely because petitioner did not demonstrate due diligence. Although there is no specific time limit for

Cite as 2010 Ark. 489

seeking a writ of error coram nobis, due diligence is required in making an application for relief. *Martin v. State*, 2010 Ark. 164 (2010). Because petitioner does not present a claim that supports a meritorious attack on the judgment, we need not consider whether the claim was brought in a diligent manner.

Petition denied.