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SUPREME COURT OF ARKANSAS
No. CR-96-1272

EVERETT FOREMAN

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered: November 15, 2018

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL COURT
TO CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS
[PULASKI COUNTY CIRCUIT COURT,
FIFTH DIVISION, NO. 60CR-93-1341]

PETITION DENIED.

RHONDA K. WOOD, Associate Justice

Petitioner Everett Foreman asks that this court reinvest jurisdiction in the trial court so that he may proceed with a petition for writ of error coram nobis. His basis for the writ is that a key witness has recanted her testimony. We do not find that Foreman has established a ground for the writ and deny the petition.

I. Standards and Grounds for the Writ

The petition for leave to proceed in the trial court is necessary because the judgment in Foreman's case was affirmed, and the trial court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Faulkens v. State*, 2017 Ark. 291. 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 trial court and which, through no negligence or fault of the

defendant, was not brought forward before rendition of the judgment. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771. A writ of error coram nobis is available for addressing certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Westerman v. State*, 2015 Ark. 69, 456 S.W.3d 374. The writ is issued only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524.

II. *Background*

In 1994, Foreman was convicted of first-degree murder in the shooting death of an off-duty police officer and sentenced to life imprisonment. This court reversed the judgment and remanded the case for a new trial. *Foreman v. State*, 321 Ark. 167, 901 S.W.2d 802 (1995).

On retrial, Foreman's girlfriend, Tracy Brooks, testified that she had been with Foreman on the night of the shooting and that she had been questioned by the police after the incident but she could not remember what she had told them. She further said that she knew about "the gun" used to shoot the victim. She explained that she had seen

Foreman and his accomplice to the crime, Durrell Childress, with the gun and that she had, on occasion, obtained it from Foreman and carried it in her purse. Brooks was cross-examined extensively about a statement she had given to the police shortly after the shooting. She ultimately admitted, however, that she had told the police that “Pee Wee” (Foreman’s nickname) had shot the police officer. Again, Foreman was convicted and sentenced to life imprisonment. We affirmed. *Foreman v. State*, 328 Ark. 583, 945 S.W.2d 926 (1997).

III. *Recantation of Witness Testimony*

Foreman’s ground to warrant reinvesting jurisdiction in the trial court to proceed with a coram nobis petition, is an affidavit in which he claims Brooks recants her testimony implicating him. He appended the affidavit to his petition. In it, Brooks avers that her statement was false that Foreman “shot and killed the police in question.” She swears that she made the statement under duress from the abusive questioning by the officers who interrogated her. This is not inconsistent with the evidence at trial. Brooks’ testimony disputed the veracity of her prior statement and Foreman had an opportunity to develop that argument. She testified that the police had been verbally abusive and threatened her. She further testified that she could not remember what she had told the police and that anything she told the police would have been told to her by a third person, not seen directly.

Foreman has not demonstrated that the writ is warranted in his case. We have explained that recanted testimony, standing alone, is not cognizable in an error coram

nobis proceeding. *Jackson v. State*, 2017 Ark. 195, 520 S.W.3d 242; *Smith v. State*, 200 Ark. 767, 140 S.W.2d 675 (1940) (holding that the writ was not available to afford relief on the ground that the principal witness against the accused had recanted and that others since the accused's conviction had confessed to the crime); *see also Taylor v. State*, 303 Ark. 586, 799 S.W.2d 519 (1990) (A witness's recantation of part of his trial testimony was not a ground for the writ as recantation of testimony did not fit within the remedy.). In addition, the allegations concerning Brook's testimony were developed during his trial.

Petition denied.