

SUPREME COURT OF ARKANSAS

No. CR 03-800

ANARIAN CHAD JACKSON
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered February 18, 2010

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM
NOBIS, AMENDED PETITION, AND
SECOND AMENDMENT TO
PETITION THE CIRCUIT COURT OF
PULASKI COUNTY
[CR 2001-1009]

PETITION AND AMENDED
PETITIONS DENIED.

PER CURIAM

In 2002, a jury found petitioner Anarian Chad Jackson guilty of first-degree murder and imposed a sentence of life imprisonment. This court affirmed. *Jackson v. State*, 359 Ark. 297, 197 S.W.3d 468 (2004). In 2008, petitioner filed a petition in this court seeking to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis as to this conviction.¹ The basis for issuance of the writ in that petition was that the prosecution had suppressed evidence concerning the testimony of certain witnesses by eliciting false testimony and withholding impeaching evidence that included evidence of State deals with the witnesses in exchange for testimony, and information concerning the guns that were

¹A 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. *Mills v. State*, 2009 Ark. 463 (per curiam).



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alleged to have been used in the shooting. This court denied the petition. *Jackson v. State*, 2009 Ark. 176 (unpublished per curiam).

Petitioner has filed a new petition requesting that this court reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.² He later filed an amended petition and a second amendment to the petition. In this new petition, petitioner again alleges prosecutorial misconduct based on allegations that the prosecution elicited false testimony and concealed impeachment evidence of a deal with a witness, the circumstances surrounding the witnesses' statements, and the circumstances concerning a gun that potentially fired the fatal bullet. He also alleges that there was a confession to the crime by another party and that there is exculpatory evidence not previously discovered. In the amended petitions, petitioner contends that his trial counsel was ineffective and asserts that evidence of recanted testimony of the witnesses provides grounds for the writ. We deny the petition and amended petitions because petitioner fails to provide any grounds upon which the writ could issue.

To the extent that petitioner alleges prosecutorial misconduct and that the prosecution withheld evidence, his claims are an abuse of the writ; we will not exercise our discretion to permit renewal of petitioner's previous application because petitioner fails to state additional facts sufficient to provide grounds for the writ. *See Jackson v. State*, 2009 Ark. 572 (per curiam) (Although claim preclusion does not apply to coram nobis proceedings to bar a subsequent application on the same grounds, a court has discretion to determine whether the

²For clerical purposes, the instant pleadings were assigned the same docket number as the direct appeal of the judgment.



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renewal of a petitioner's application for the writ, with additional facts in support of the same grounds, will be permitted.). Petitioner does not state facts in his new petitions that support his claim that the prosecution withheld evidence; he again relies on conclusory assertions that the prosecution elicited false testimony and allegations of recanted testimony. We will not permit renewal of the application for the writ without a statement of facts sufficient to distinguish the renewed claims. *See id.*

Despite petitioner's assertion to the contrary, a claim of recanted testimony is not cognizable in an error coram nobis proceeding. *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (per curiam) (citing *Smith v. State*, 200 Ark. 767, 140 S.W.2d 675 (1940) and *Taylor v. State*, 303 Ark. 586, 799 S.W.2d 519 (1990)). As was the case in *Thomas*, petitioner here does not point to facts that would support a contention that material information was withheld from the defense. The witnesses at issue recanted the statements adverse to petitioner at trial, and the issues that petitioner raises now, as noted in our previous opinion, were raised during the trial proceedings. Because the defense was aware of the facts, whether ultimately presented to the jury or not, those facts are not sufficient to support grounds for the writ. *See Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005) (Due diligence is required in application for relief, and error coram nobis relief was not available where the facts were known to the court, the prosecutor, and the defense team at the time of trial.); *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam) (For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to



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the record.).

To the extent that petitioner asserts that any of the allegedly withheld evidence was not known to the defense at the time of trial, he fails to assert any facts to give rise to the type of fundamental error required. There is a distinction between fundamental error which requires issuance of the writ and newly discovered information which 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); see also *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). Although petitioner asserts that a confession occurred, the supporting affidavits do not include any confession.³ Even if such a confession had been attached to the petition, the allegation was not timely raised because petitioner's conviction has been affirmed. A petition for writ of error coram nobis based on a third-party confession must be brought before the conclusion of appellate review of the judgment. *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997) (per curiam).

Petitioner's final new ground for the writ alleges ineffective assistance of counsel. Ineffective-assistance claims are outside the purview of a coram nobis proceeding. *Crosby v. State*, 2009 Ark. 555 (per curiam); *Scott v. State*, 2009 Ark. 437 (per curiam). Because petitioner fails to state grounds that would support issuance of the writ, his requests to reinvest jurisdiction in the trial court to consider a petition for the writ are denied.

Petition and amended petitions denied.

No briefs filed.

³Petitioner references an affidavit by Antonio Smith, but Mr. Smith does not claim to have shot the victim. Instead, he provides a statement that another individual was with petitioner's accomplice and may be construed to implicate the other individual in firing the fatal shot.