

Cite as 2010 Ark. 140

ARKANSAS SUPREME COURT

No. CR 06-88

JUDY ANN FLANAGAN
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered March 18, 2010

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER PETITION
FOR WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF CRAIGHEAD
COUNTY, EASTERN DISTRICT, CR
2004-34]

PETITION DENIED.

PER CURIAM

In 2005, petitioner Judy Ann Flanagan was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Flanagan v. State*, 368 Ark. 143, 243 S.W.3d 866 (2006).

Now before us is petitioner's pro se petition seeking permission to proceed in the trial court with a petition for writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial

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

than its approval. *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002) (per curiam). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Id.* 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. *Newman*, 2009 Ark. 539, 354 Ark. 61 (citing *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam)).

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Id.* 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. *Id.*

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. *Newman*, 2009 Ark. 539, 354 Ark. 61. In making such a determination, we look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Id.* Although there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief. *Id.* In the absence of a valid excuse for delay, the petition will be denied. Due diligence requires that (1) the defendant be unaware of the fact at the time of the trial; (2) the defendant could not have, in the exercise of

due diligence, presented the fact at trial; and (3) the defendant, after discovering the fact, did not delay bringing the petition. *Id.* The requirements are a sequence of events, each of which a petitioner must show to prove due diligence. *Id.*

As grounds for issuance of the writ, petitioner first contends that she was mentally incompetent at the time of trial as a result of medications that she was taking at that time. Petitioner on direct appeal raised a similar claim, arguing that one of the statements she gave to police was inadmissible because she was not capable of voluntarily waiving her right against self-incrimination. She asserted on appeal that she had low intelligence, a history of mental illness, and was taking three prescriptions for mental illness at the time she made one of the statements. This court held that the question of petitioner's competence to waive her rights at the time the statement was given was a matter of witness credibility, and, considering the totality of the circumstances, the circuit court did not err in admitting the statement into evidence.

Petitioner argues now that if the jury had been made aware of her psychiatric problems over the period of her entire lifetime, including her suicide attempts, the outcome of the trial would have been different. Petitioner faults the trial court, the prosecutor, and her attorney at trial for failing to adduce the evidence that would have given the jury a true picture of her mental condition.

Here, we find that petitioner's grounds for the writ were known at the time of trial, or could have been known at the time of trial, and that she has failed to exercise due diligence in raising the issues. Petitioner has cited no fact that would have prevented the rendition of the

judgment that could not have been brought forward at the time of trial. Accordingly, there is no ground stated for issuance of a writ of error coram nobis. *See Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003).

To the extent that petitioner is claiming that trial counsel was ineffective, claims of ineffective assistance of counsel are outside the purview of a coram nobis proceeding. *Pierce v. State*, 2009 Ark. 606 (per curiam) (citing *Mills v. State*, 2009 Ark. 463 (per curiam)). Such allegations are properly raised in a timely postconviction proceeding pursuant to Arkansas Rule of Criminal Procedure 37.1, and a petition for writ of error coram nobis is not a substitute for proceeding under Rule 37.1 or an opportunity to raise new allegations that could have been raised under the rule. *See Id.*

Petitioner also contends that she is entitled to a new trial on the ground that there was trial error in that the custodial statements that she gave to police were not admissible into evidence, the evidence was insufficient to sustain the judgment, excessive news coverage of her case tainted the jury, gruesome inflammatory photographs and videotapes were erroneously admitted into evidence, and she was not present at a material stage of her trial when the jury asked to review certain evidence. Each of the claims was, or could have been, raised at trial and on appeal. Issues of mere trial error that were, or could have been, raised at trial are not cognizable in a coram nobis proceeding. *See Buckhanna v. State*, 2009 Ark. 490 (per curiam). Likewise, a challenge to the sufficiency of the evidence is a direct attack on the judgment and must be made at trial and on appeal. *Pierce*, 2009 Ark. 606.

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Petition denied.

Judy Ann Flanagan, pro se petitioner.

No response.