

Cite as 2019 Ark. 156
SUPREME COURT OF ARKANSAS
No. CR-18-646

DUANE JEFFERSON GONDER
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 23, 2019

PRO SE APPEAL FROM THE DREW
COUNTY CIRCUIT COURT; PRO SE
APPELLANT'S MOTION FOR RULE ON
CLERK

[NO. 22CR-10-53]

HONORABLE SAM POPE, JUDGE

APPEAL DISMISSED; MOTION MOOT.

JOHN DAN KEMP, Chief Justice

In the trial court where he had entered a negotiated plea and been convicted of furnishing prohibited articles, appellant Duane Jefferson Gonder filed a pro se petition and two amendments in which he sought a writ of audita querela. The trial court dismissed the petition and amendments, finding that the writ is not recognized and that it was therefore without jurisdiction to modify the judgment. Gonder filed a motion for reconsideration of that decision, and after the trial court denied his motion, Gonder lodged an appeal in this court. Gonder filed a pro se motion in which he seeks to file his reply brief belatedly. Gonder cannot prevail on appeal because, although the trial court had jurisdiction to provide relief through an alternative writ, Gonder stated no basis for issuance of the writ. The trial court correctly declined to provide the relief he sought, and this court must dismiss the appeal. Gonder's motion is moot.

A writ of audita querela is indistinguishable from a writ of error coram nobis, and a request for audita querela relief is properly treated as one seeking relief through a writ of error coram nobis. *Munnerlyn v. State*, 2018 Ark. 161, 545 S.W.3d 207. Arkansas Rule of Civil Procedure 60(k) specifically abolished coram vobis and audita querela actions as a procedure for obtaining relief from a judgment; therefore, any petition for a writ of error challenging a criminal judgment of conviction in this state is clearly a petition for a writ of coram nobis as it applies in modern law. *Whitney v. State*, 2018 Ark. 138. Nevertheless, this court may uphold the decision denying issuance of a writ even though it was done for the wrong reason. *Edgemon v. State*, 292 Ark. 465, 730 S.W.2d 898 (1987). As noted, under modern law, the grounds for relief and procedural rules for a writ of error are those for coram nobis, and Gonder failed to allege grounds to support that relief.

In his petitions, Gonder asserted grounds for relief based on an error of law, alleging that the court and the parties had misinterpreted the statute under which he was charged. The writ of error coram nobis will lie only to correct errors of fact and not errors of law. *Hallman v. State*, 2018 Ark. 336, 561 S.W.3d 305. Gonder was entitled to no relief outside that provided through a writ of error coram nobis, and his claims did not place him within the pale of protection afforded by the writ as defined. *Smith v. State*, 200 Ark. 767, 140 S.W.2d 675 (1940).

Appeal dismissed; motion moot.

HART, J., dissents.

JOSEPHINE LINKER HART, Justice, dissenting. The majority has failed to recognize that the circuit court *dismissed* Mr. Gonder's petition because it opined that it lacked jurisdiction. While I agree that the circuit court erred in that finding, the simple fact is that it refused to exercise jurisdiction. 'As this court noted in *Ewells v. State*, 2014 Ark. 351, 439 S.W.3d 667, "if the trial court did not have jurisdiction to act on the merits of the . . . petition, this court does not have jurisdiction in the matter." The proper disposition of this appeal is to reverse and remand it to the circuit court, not usurp its duties.

I respectfully dissent.

Duane Gonder, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Michael A. Hylden*, Ass't Att'y Gen., for appellee.