

Cite as 2019 Ark. 173
SUPREME COURT OF ARKANSAS
No. CR-14-1088

FRED L. WILLIAMS

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered May 30, 2019

PRO SE SECOND PETITION AND
AMENDED PETITIONS TO REINVEST
JURISDICTION IN THE TRIAL COURT
TO CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS
[DREW COUNTY CIRCUIT COURT,
NO. 22CR-13-43]

PETITION AND AMENDED PETITIONS
DENIED.

JOSEPHINE LINKER HART, Associate Justice

Petitioner Fred L. Williams brings this petition and amended petitions to reinvest jurisdiction in the trial court so that he may proceed with a petition for writ of error coram nobis in his criminal case. It is the second such petition filed by Williams. The first petition was brought before this court in 2017 and denied. *Williams v. State*, 2017 Ark. 145, 516 S.W.3d 722 (per curiam).

In the petition and amended petitions now before us, Williams argues that the writ should issue because there were flaws in his trial and in his direct appeal, including prosecutorial misconduct, trial error, due-process violations, and appellate counsel's failure to raise all pertinent issues on direct appeal. Because none of Williams's claims are based upon information outside of the record or otherwise unknown to petitioner, error coram nobis is not available to address his claims, and we accordingly deny the petition.

I. *Nature of the Writ*

The petition for leave to proceed in the trial court is necessary because 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. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. A writ of error coram nobis is an extraordinarily rare remedy. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524. 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*, 2009 Ark. 539, 354 S.W.3d 61. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771.

II. *Grounds for the Writ*

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

III. *Background*

In 2014, Williams was found guilty of first-degree murder and abuse of a corpse for which he was sentenced as a habitual offender to an aggregate term of life imprisonment. Williams also entered a plea of guilty in 2014 to the offense of felon in possession of a firearm and later filed a coram nobis petition in the trial court in the case. In the petition, he raised allegations that overlapped significantly with claims pertaining to his conviction by a jury of murder in the first degree and abuse of a corpse. Williams appealed the denial of his petition, and this court affirmed the trial court's order. *Williams v. State*, 2017 Ark. 313, 530 S.W.3d 844.

IV. *Prosecutorial Misconduct*

Williams contends that a writ of coram nobis should issue because the prosecutor bolstered the evidence in his remarks in favor of the State, insinuated that Williams had engaged in conduct that was not established by the evidence, made false and contradictory statements, assassinated Williams's character to inflame the jury's passion and prejudice, suggested to the jury that he (the prosecutor) was more credible than Williams, implied that Williams had stolen the victim's property, and made improper statements in the State's closing arguments. Williams argues that the prosecutor's conduct, when viewed cumulatively, denied him a fair trial.

This court has held that allegations of prosecutorial misconduct that could have been raised at trial fail as a ground for the writ. *See Howard*, 2012 Ark. 177, 403 S.W.3d

38 (noting that a writ of error coram nobis is only appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown). A coram nobis action does not provide the petitioner with a means to retry his or her case. *Carner v. State*, 2018 Ark. 20, 535 S.W.3d 634.

V. Trial Error

Williams asserts that the rules of evidence were violated at his trial. He not only seeks coram nobis relief on that basis but also asks that this court's mandate on direct appeal be recalled to correct the trial errors and because there were claims "omitted on direct appeal." Williams has not stated a ground for coram nobis relief. Assertions of trial error that were raised at trial, or which could have been raised at trial, are not within the purview of a coram nobis proceeding. *Martinez-Marmol v. State*, 2018 Ark. 145, 544 S.W.3d 49.

As for claims omitted on direct appeal, if Williams is contending that this court erred in some respect in its review of his case on direct appeal, a coram nobis proceeding is not a means to challenge the review conducted by the appellate court on direct appeal. Any petition for rehearing that Williams desired to file after this court had affirmed the judgment should have been filed in accordance with Arkansas Supreme Court Rule 2-3 (2017) before the mandate of this court was issued. *Carner*, 2018 Ark. 20, 535 S.W.3d 634.

To the degree that Williams may be claiming that his trial or appellate attorney was ineffective for failing to raise issues at trial or on the record on appeal, claims of ineffective

assistance of counsel are not cognizable in a coram nobis proceeding. *State v. Tejeda-Acosta*, 2013 Ark. 217, 427 S.W.3d 673. Such claims are properly brought pursuant to our postconviction rule, Rule 37.1. A petition for writ of error coram nobis is not a substitute for proceeding under the Rule. *Id.*

VI. *Due Process*

Williams's final ground for the writ is that he was denied due process of law because the crime laboratory's report was at variance with testimony at trial (an arrest report), the State relied on two theories of how the victim died, and he was denied by the myriad errors in his trial an opportunity to advance a defense of diminished capacity. Again, all of this information is in the trial record, and error coram nobis cannot be used to raise issues that should have been raised at trial or on direct appeal. *Martinez-Marmol*, *supra*. Moreover, there is no contradiction between the excerpt from the crime laboratory report (which determined that the victim's death was homicide by asphyxiation) and the arrest report (which recounted a statement by Williams that the victim had sought to engage in rough erotic sex). To the extent Williams is alleging that the evidence presented at trial was not sufficient to support a finding of the defendant's guilt are issues to be addressed at trial and, when appropriate, on the record on direct appeal. *Jackson v. State*, 2017 Ark. 195, 520 S.W.3d 242.

Petition and amended petitions denied.