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SUPREME COURT OF ARKANSAS

No. CR-96-428

Opinion Delivered February 24, 2011

LARRY RAYFORD
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [ASHLEY COUNTY CIRCUIT COURT, CR 93-18]

PETITION DENIED.

PER CURIAM

In 1994, petitioner Larry Rayford was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Rayford v. State*, 326 Ark. 656, 934 S.W.2d 496 (1996).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[1] It is the third such petition filed in this court.[2] A petition for leave to proceed in the trial court is necessary because the circuit court

[1]For clerical purposes, the instant petition was assigned the same docket number as the direct appeal of the judgment, CR 96-428.

[2]In the initial petition, petitioner claimed that he had newly discovered evidence that the State made promises to prosecution witness Huey Zane Brooks in return for his testimony. He argued that the evidence established a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), in that the State had wrongfully withheld evidence favorable to his defense. We held that there had been no *Brady* violation. *Rayford v. State*, CR 96-428 (Ark. Mar. 4, 2004) (unpublished per curiam). In the second error coram nobis petition and amended petition, petitioner asserted that the judge who signed an order in his case, following judgment and

can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Fudge v. State*, 2010 Ark. 426; *Grant v. State*, 2010 Ark. 286, 365 S.W.3d 894 (per curiam) (citing *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61); *see also Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Fudge*, 2010 Ark. 426 (per curiam); *Barker v. State*, 2010 Ark. 354, 373 S.W.3d 865; *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). 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. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. 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. *Grant*, 2010 Ark. 286 (citing *Newman*, 2009 Ark. 539); *see also Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam); *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Webb v. State*,

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pending appeal, had been the prosecuting attorney who signed the felony information in his case. He also contended that another prosecutor persuaded the trial judge to omit information from the order at issue that might have changed the outcome of his trial or appeal. This court again found no ground to warrant issuance of the writ. *Rayford v. State*, CR 96-428 (Ark. Feb. 14, 2008) (unpublished per curiam).

2009 Ark. 550 (per curiam); *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Venn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

Petitioner's grounds for issuance of the writ arise out of a statement that he alleges was made by him in November 1992, more than one year before his trial, while he was housed in the Drew County Detention Center. Petitioner states that he was permitted a visit with Roderick Guy and the late Ruby Rayford during which he gave a statement that exculpated him of murder and gave a detailed description of the actual perpetrator of the crime. He contends that the statement was never revealed to the defense.

Petitioner further contends that the fact that investigator Tommy Cox took the exculpatory statement from him in the presence of the two witnesses was not revealed during the examination of Cox at trial. He claims that the statement was either destroyed or deliberately suppressed.

Appended to the petition is the affidavit of Roderick Guy who avers that he visited petitioner in jail in 1992 and was present when petitioner gave a written statement to Tommy Cox in which petitioner provided a description of a man who committed the murder. Also appended to the petition is a copy of a letter from petitioner's trial attorney to him dated April 20, 2005, in which the attorney states that enclosed with the letter is a copy of petitioner's file. Petitioner avows that upon receipt of the file, he discovered that the written statement taken by Cox was not included. He states that he would have brought the issue of the statement up sooner, but he could not locate Tommy Cox and Roderick Guy to have them attest to the existence of the statement.

Petitioner has not raised a claim that warrants reinvesting the trial court with jurisdiction to consider a petition for writ of error coram nobis. First, petitioner himself gave the statement that he alleges was somehow suppressed by the prosecution. Clearly, he could have informed his attorney that he made the statement well before trial and allowed the matter to be investigated by counsel. The statement was not evidence extrinsic to the record that could not have been known at trial. As such, petitioner has not established a ground for the writ. *See Harris v. State*, 2010 Ark. 489 (per curiam) (citing *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006)).

As this court noted on direct appeal, petitioner gave several conflicting statements to police regarding how the shooting took place, including the claims that he was warding off the victim's unwanted sexual advances and that he accidentally shot the victim when the two of them were "fumbling" with the gun. (He concedes in the instant petition only that he disposed of the victim's body.) Assuming that the written statement in question existed, at most, it would have created a question of petitioner's credibility for the jury to decide. The fact that the statement was not introduced at trial did not constitute a fundamental error of the type a coram nobis proceeding is intended to correct. There is a distinction between fundamental error and some information that might have created a credibility question had it been known by the jury. *See Cooper v. State*, 2010 Ark. 471 (per curiam).

Petition denied.