

Cite as 2019 Ark. 175 (UNPUBLISHED)
ARKANSAS SUPREME COURT
No. CR-93-432

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| DAVID LEE EDWARDS | | Opinion Delivered | April 2, 2009 |
| | PETITIONER | | |
| v. | | | PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [CIRCUIT COURT OF CRITTENDEN COUNTY, NOS. CR 92-209, CR 91-558, CR 91-559] |
| STATE OF ARKANSAS | | | |
| | RESPONDENT | | |
| | | | <u>PETITION DENIED.</u> |

PER CURIAM

A jury found petitioner David Lee Edwards guilty of capital murder, first-degree battery and being a felon in possession of a firearm, and this court affirmed the judgment. *Edwards v. State*, 315 Ark. 126, 864 S.W.2d 866 (1993). Petitioner filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1, and this court affirmed the denial of postconviction relief on the basis that the petition was untimely. *Edwards v. State*, CR 94-1148 (Ark. May 15, 1995) (per curiam). Petitioner was denied a writ of habeas corpus on two occasions and unsuccessfully sought to appeal the adverse decisions to this court. *Edwards v. State*, CR 96-396 (Ark. Jul. 1, 1996) (per curiam); *Edwards v. State*, CR 03-1004 (Ark. Nov. 4, 2004) (per curiam).

Petitioner has now filed a petition in this court in which he requests 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. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

Petitioner also requests this court to issue a writ of habeas corpus, but we do not address those claims. Although this court may entertain original petitions for writ of habeas corpus, any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed in circuit court. See *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

As to petitioner's request to pursue error coram nobis relief, he fails to state a sufficient basis for any claim cognizable in a proceeding for the writ. The function of the writ is to secure relief from a judgment rendered while there existed some fact which 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 judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is appropriate when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). For the writ to issue following the affirmance of a conviction, the

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

petitioner must show a fundamental error of fact extrinsic to the record. *Thomas v. State*, 367 Ark. 478, 241 S.W.3d 247 (2006) (per curiam). Petitioner asserts no issue that was hidden or unknown or any error of fact extrinsic to the record.

Petitioner alleges trial errors based only upon facts apparent at the time of trial. He brings allegations of error as to the failure to suppress his statements because of a warrantless search, his absence at hearings, the sufficiency of the evidence, ineffective assistance of counsel, improper statements during closing arguments, defects in the information charging him, lack of jury instructions on lesser included offenses, and irregularities in the verdict form for sentencing.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *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 errors found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, a third-party confession to the crime during the time between conviction and appeal. *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam).

Petitioner contends that the prosecution withheld evidence as to certain witnesses, but he references subpoenas indicating that the defense was aware of those witnesses. It is clear that none of petitioner's other claims falls within any of the recognized categories of error. All of the facts upon which petitioner bases his claims are contained within the

record, and none was hidden or unknown. It is petitioner's burden to show that the writ is warranted. *Hutcherson v. State*, No. CR-00-645 (Ark. Jan. 15, 2009) (per curiam). Petitioner has failed to meet his burden and has provided no cause for jurisdiction to be reinvested in the trial court to consider a petition for the writ.

Petition denied.