

ARKANSAS SUPREME COURT

No. CACR 05-1183

WALTER A. MCCULLOUGH
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 16, 2009

PRO SE PETITION FOR WRIT OF
CERTIORARI [CIRCUIT COURT OF
CRAIGHEAD COUNTY, WESTERN
DISTRICT, CR 2004-820]

PETITION TREATED AS MOTION
FOR RECONSIDERATION AND
DENIED.

PER CURIAM

On February 5, 2009, this court handed down *McCullough v. State*, CACR 05-1183 (Ark. Feb. 5, 2009) (per curiam), in which we denied petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. Now before us is a pro se petition for a writ of certiorari to bring up a record for review pertaining to our decision, which we treat as a motion for reconsideration.

In our ruling, we held that petitioner failed to substantiate his allegation that the prosecutor had suppressed material exculpatory evidence. He also failed to show that a fundamental error of fact existed that was extrinsic to the record and would have prevented the rendition of the judgment had it been known at the time of the trial. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). We based our ruling, in part, on the motion for new trial filed by petitioner that raised the same arguments contained in the coram nobis petition. We further determined that petitioner's remaining claims did not fall within one of the four categories for which coram nobis relief is available. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam).

In the instant petition for writ of certiorari, petitioner contends that only after the trial did he discover the bases for the allegations contained in the motion for new trial and points out that the trial court did not rule on the motion. He thus contends that our ruling, in which we found that no fundamental error of fact existed that was extrinsic to the record, was in error. Petitioner also raises again claims of perjured testimony allegedly given by certain witnesses at trial.

As petitioner raised the claims in the motion for new trial, he could have obtained a ruling on them but chose not to do so. A coram nobis proceeding does not provide a means to address those issues now. Moreover, petitioner raised the issue of witness credibility in the direct appeal. Issues which were, or could have been, raised at trial and on the record in the direct appeal of the judgment are settled and are not cognizable as grounds for the writ. *Mosley v. State*, 333 Ark. 273, 968 S.W.2d 612 (1998).

Petitioner has the burden of demonstrating that there was some error of fact or law in the present decision that would merit reconsideration of the denial of the petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). Petitioner's motion for reconsideration does not establish such an error of law or fact, reiterates the same allegations made in the prior petition and fails show entitlement to reconsideration.

Petition treated as motion for reconsideration and denied.