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ARKANSAS SUPREME COURT

No. CR 93-1071

RANDALL T. McARTY
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 23, 2009

PRO SE PETITION TO REINVEST JURISDICTION IN TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [CIRCUIT COURT OF CLARK COUNTY, CR 92-11]

PETITION DENIED.

PER CURIAM

In 1993, petitioner Randall T. McArty, who is also known as Randall Thomas McArty, was found guilty by a jury of first-degree murder and sentenced to life imprisonment. We affirmed. *McArty v. State*, 316 Ark. 35, 871 S.W.2d 346 (1994).

Thereafter, petitioner sought postconviction relief in circuit court[1] and filed in this court two petitions to reinvest jurisdiction in the trial court to consider a writ of error coram nobis,[2] all of which were unsuccessful. Now before us is petitioner's third pro se petition to

[1]Petitioner filed two petitions pursuant to Arkansas Rule of Criminal Procedure 37.1 (*McArty v. State*, CR 94-1010 (Ark. Apr. 10, 1995) (per curiam); *McArty v. State*, CR 00-969 (Ark. Feb. 8, 2001) (per curiam)), a petition for writ of habeas corpus pursuant to Act 1780 of 2001 (*McArty v. State*, CR 03-710 (Ark. Oct. 28, 2004) (per curiam)), a motion to set aside the judgment under Arkansas Rule of Civil Procedure 60 (*McArty v. State*, 364 Ark. 517, 221 S.W.3d 332 (2006) (per curiam)), and a petition for writ of habeas corpus (*McArty v. State*, 08-77 (Ark. Jun. 5, 2008) (per curiam)).

[2]*See McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam); *McArty v. State*, CR 93-1071 (Ark. Oct. 16, 2003) (per curiam).

reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.[3] The petition to reinvest jurisdiction in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis, an extraordinary remedy that is rarely granted, 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). These errors 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. *Id.*

After a conviction has been affirmed, the writ is appropriate to secure relief from a judgment when a petitioner can demonstrate that a fundamental error of fact existed that was not addressed, or could not have been addressed, at trial because it was extrinsic to the record and somehow hidden or unknown to the petitioner. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004); *State v. Larimore,* 341 Ark. 397, 17 S.W.3d 87 (2000). Moreover, a petitioner must show that had the fact been known to the trial court, it would have prevented rendition of the judgment, and it was not brought forward before rendition of judgment through no negligence or fault of the petitioner. *Cloird v. State*, *supra*; *State v. Larimore*, *supra*.

[3]For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984). The court is not required to accept the allegations contained in a petition at face value. *Cloird v. State*, *supra*. "The mere naked allegation that a constitutional right has been invaded will not suffice. The application should make a full disclosure of specific facts relied upon and not merely state conclusions as to the nature of such facts." *Cloird v. State*, 357 Ark. at 450, 182 S.W.3d at 479 (quoting *State v. Larimore*, 341 Ark. at 407, 17 S.W.3d at 93).

Here, petitioner makes two primary arguments for relief.[4] He first alleges that the prosecutor suppressed a "preliminary medical report" that disclosed the victim's time of death, and presents the Clark County coroner's report as the suppressed document.[5] Petitioner contends that the time of the victim's death was crucial to impeaching the medical examiner's testimony and proving that he was not at home when the victim was murdered. Withholding material exculpatory evidence by the prosecutor is one of the categories for which coram nobis relief is available. *Pitts v. State*, *supra*.

[4]Petitioner also states in conclusory fashion that he is innocent of the crimes which would be shown by the lack of his fingerprints on the murder weapon. To the extent that petitioner may be attempting to seek scientific testing of evidence introduced at trial, that remedy is properly pursued in a petition pursuant to Act 1780 of 2001. A petition seeking a writ of error coram nobis is not the correct forum in which to raise this issue.

[5]Petitioner's instant argument is not precluded by prior postconviction filings. In the second coram nobis petition filed by petitioner, he also claimed that the prosecutor suppressed portions of the medical examiner's report. But the document that has allegedly been suppressed in the instant matter differs from the documents at issue in the prior coram nobis petition. Also, the petition for writ of habeas corpus that petitioner filed in 2007 raised the exact issue argued here. In dismissing the petition, the circuit court did not reach petitioner's substantive argument. Because this particular argument was not decided in prior cases, the law-of-the-case doctrine will not prevent the issue from being concluded here. See discussion *infra*.

The three-prong test to determine whether such suppression has occurred requires showing that (1) the evidence at issue is favorable to the accused, because it is either exculpatory or impeaching, (2) the evidence was suppressed by the State, either willfully or inadvertently, and (3) prejudice ensued. *Brady v. Maryland*, 373 U.S. 83 (1963); *Sanders v. State*, 374 Ark. 70, 285 S.W.3d 630 (2008) (per curiam). To merit relief, a petitioner must demonstrate that there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the information been disclosed at trial. *Sanders v. State*, *supra*.

Petitioner's allegation that the coroner's report was suppressed is merely conclusory and need not be taken at face value. *Cloird v. State*, *supra*. Under the three-prong *Brady* test, petitioner first fails to demonstrate that the estimated time of death listed on the report would have been exculpatory. He claims here that the report would support the alibi that he was not present when the victim was murdered. However, he argued at trial that he acted in self-defense, and reiterated that argument in numerous postconviction petitions, including the second coram nobis petition filed here. Furthermore, under the second prong of the test, petitioner simply fails to present any proof that would substantiate his allegation of prosecutorial suppression. *Sanders v. State*, *supra*. Other than this conclusory allegation, petitioner offers no basis to establish that a *Brady* violation has occurred. *Id.*

Next, petitioner argues that he was under the influence of drugs during the trial, which compounded his borderline mental retardation and caused him to be insane. He provides

various documents for the proposition that his insanity allowed him to be coerced into confessing to murder during the trial, including a psychological evaluation conducted while petitioner was in high school. Insanity at the time of the trial is one of the categories for which coram nobis relief is available. *Pitts v. State*, *supra*.

Petitioner has raised an insanity argument in a prior coram nobis petition. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). His claim for postconviction relief on this ground is thus precluded from being raised again pursuant to the law-of-the-case doctrine. *Green v. State*, 343 Ark. 244, 33 S.W.3d 485 (2000). This doctrine dictates that an issue raised and concluded in a prior appeal decision may not be revisited in a subsequent appeal as the matter becomes res judicata. *Id.* (citing *Mode v. State*, 234 Ark. 46, 350 S.W.2d 675 (1961); *Bowman v. State*, 93 Ark. 168, 129 S.W. 80 (1909); *Perry v. Little Rock & Fort Smith Railway Co.*, 44 Ark. 383 (1884)). Law of the case applies even if the prior decision was wrongly decided. *Green v. State*, *supra* (citing *Rankin v. Schofield*, 81 Ark. 440, 98 S.W. 674 (1905)).

Moreover, even if law-of-the-case did not prohibit this argument, petitioner fails to show that the documents were not addressed, or could not have been addressed, at trial because they were somehow hidden or unknown. *Cloird v. State*, *supra*. Trial counsel testified at the Rule 37.1 petition hearing that, prior to trial, petitioner's mother supplied counsel with a copy of the test conducted while petitioner was in high school. Petitioner's medical history record, which shows only that petitioner had been given Xanax for "nerves" around and

during the time of the trial, was clearly known to petitioner and could have been made available to counsel. *Id*. Further, neither the test report nor the medical history record support petitioner's conclusory allegation of actual insanity during the trial.

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird v. State*, *supra*. Here, petitioner fails to make a showing that the allegations contained in his petition were meritorious or were grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis. As no substantive basis exists for granting the petition, we need not reach the issue of whether petitioner exercised due diligence in proceeding for the writ.

Petition denied.