

Cite as 2009 Ark. 265 (unpublished)

ARKANSAS SUPREME COURT

No. CR 00-565

STEVEN BADER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 7, 2009

PRO SE MOTION FOR
RECONSIDERATION OF DENIAL
OF PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT
OF BENTON COUNTY, CR 98-440]

MOTION DENIED.

PER CURIAM

Following petitioner Steven Bader's conviction, in 1999, on a charge of first-degree murder and revocation of petitioner's probation on three additional charges, this court affirmed the judgment. *Bader v. State*, 344 Ark. 241, 40 S.W.3d 738 (2001). Subsequently, petitioner filed in this court a pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis that we denied. *Bader v. State*, CR 00-565 (Ark. Feb. 12, 2009) (per curiam).¹ Petitioner now brings a motion in which he seeks reconsideration of that decision.

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



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Petitioner reasserts the same arguments in his petition, once again, and argues that his lawyer did not bring the claims on appeal. He contends that he was unable to raise the issues in a petition under Arkansas Rule of Criminal Procedure 37.1 because his petition was dismissed.

Appellant asks that we allow the issues to go forward because he alleges that the claims should have been, but were not actually, raised and considered on appeal or in a Rule 37.1 proceeding. But, as we indicated in our previous decision, a claim is not cognizable in a petition for writ of error coram nobis if it *may* be properly raised in a timely petition for postconviction relief pursuant to Rule 37.1 or on direct appeal. *See McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). The types of claims petitioner would raise are not appropriate to a petition for the writ because those claims could have been considered on appeal or in a Rule 37.1 proceeding, whether the claims actually were considered or not. Extraordinary relief is not a substitute for an appeal. *Dean v. Williams*, 339 Ark. 439, 6 S.W.3d 89 (1999); *Gran v. Hale*, 294 Ark. 563, 745 S.W.2d 129 (1988).

Moreover, as before, petitioner bases his request upon arguments that are grounded in facts known at the time of trial and contained in the record. As stated in our previous opinion, for the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).



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In his motion for reconsideration, petitioner has offered no additional basis that would support our granting permission to proceed with a petition for the writ, or pointed to any error in our previous decision. Because petitioner demonstrates no good cause to reconsider our previous decision, we deny the motion.

Motion denied.