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SUPREME COURT OF ARKANSAS

No. CR-01-1143

GLENN ADOLPH WILLIAMS PETITIONER V. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered:** May 5, 2022 PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS [FULTON COUNTY CIRCUIT COURT, NO. 25CR-00-42] PETITION DENIED.

BARBARA W. WEBB, Justice

A Fulton County jury convicted petitioner Glenn Adolph Williams of manufacturing a controlled substance (methamphetamine), possession of a controlled substance with intent to deliver (methamphetamine), and possession of drug paraphernalia with intent to manufacture methamphetamine for which he was sentenced to an aggregate term of one hundred years' imprisonment. Williams appealed, and the Arkansas Court of Appeals affirmed his convictions and sentence. *Williams v. State*, CR-01-1143 (Ark. App. Sept. 4, 2002) (unpublished) (original docket number CACR-01-1143). Williams now brings this pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis in which he contends evidence was withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Because Williams fails to establish a ground for relief, the petition is denied.

I. *Background*

Williams's convictions arose when, in the early morning hours of June 27, 2000, Chief Michael Davis of the Mammoth Spring Police Department approached a parked car in an alley behind Williams's residence. The occupant of the car, Jeffrey McConnaha, gave permission to search the vehicle. Chief Davis found a jar of muriatic acid and a can of Coleman fuel, and he noticed a smell in the car and alley that resembled an odor he had smelled near methamphetamine laboratories. McConnaha told Chief Davis that he had been waiting on Williams so he could give Williams the items he had for making methamphetamine, and Williams would produce the methamphetamine. McConnaha was arrested and interviewed, and Chief Davis forwarded the information to Chief Investigator Scott Russell of the Sixteenth Judicial District Drug Task Force, who prepared an affidavit for a search warrant. After the search warrant issued, suspected drugs as well as paraphernalia and ingredients used in the manufacture of methamphetamine were recovered from Williams's residence.

At trial, McConnaha testified that he was waiting to give Williams the fuel and acid in exchange for two eight balls of methamphetamine. McConnaha stated he had assisted Williams several times in manufacturing methamphetamine, had taken him pseudoephedrine tablets, and had seen a pill soak taking place at Williams's apartment. Rhonda Mohlke, who was staying in Williams's apartment when the search warrant was executed, stated she saw drug activity in the apartment. Mohlke further stated that a guy named "Jeff" had brought bottles of Heat and decongestant tablets to Williams and that they talked about "making the stuff."

In his direct appeal, Williams raised various arguments to support his claims that there was insufficient evidence supporting his convictions and sentences. Williams also argued that the trial court erred by denying a motion to suppress the affidavit in support of the search warrant because it was based entirely on hearsay evidence, primarily because (1) McConnaha's statement was unreliable as he was an admitted accomplice, (2) Russell attempted to mislead the trial court into believing officers smelled ethyl alcohol in the vicinity of Williams's apartment, and (3) Russell conducted McConnaha's interview. The court of appeals affirmed, finding none of Williams's arguments held any merit. *See Williams*, CR-01-1143. Williams subsequently sought postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2002). The trial court denied relief, and Williams appealed. This court denied relief, finding the trial court's denial of relief regarding Williams's numerous allegations of ineffective assistance of counsel were not meritorious. *Williams v. State*, CR-03-873 (Ark. Nov. 18, 2004) (per curiam).

II. *Nature of the Writ of Error Coram Nobis*

The petition for leave to proceed in the trial court is necessary because the trial court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission. *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. A writ of error coram nobis is an extraordinarily rare remedy. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524. 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 trial court and

which, through no negligence or fault of the defendant, was not brought forward before rendition of the judgment. *Newman*, 2009 Ark. 539, 354 S.W.3d 61. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771. We are not required to accept the allegations in a petition for writ of error coram nobis at face value. *Jackson v. State*, 2017 Ark. 195, 520 S.W.3d 242.

III. *Grounds for the Writ of Error Coram Nobis*

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Id.* A writ of error coram nobis is available for addressing certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38.

IV. *Claims for Issuance of the Writ*

While a *Brady* violation comes within the purview of coram nobis relief, the fact that a petitioner alleges a *Brady* violation is not in itself sufficient to provide a basis for the writ. *Wallace v. State*, 2018 Ark. 164, 545 S.W.3d 767. It is a violation of *Brady* and a ground for the writ if the defense was prejudiced because the State wrongfully withheld evidence from the defense prior to trial. *Mosley v. State*, 2018 Ark. 152, 544 S.W.3d 55. There are three elements of a *Brady* violation: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *Carner v. State*, 2018 Ark. 20, 535 S.W.3d 634.

Williams claims that the prosecutor possessed exculpatory evidence of an uncorroborated hearsay statement that was used for issuance of a search warrant that was not disclosed to the defense. Williams further claims that the prosecutor knew the statement was based on hearsay and did not disclose the information "until during the suppression hearing before the trial." Williams also alleges that the State willfully suppressed the statement yet introduced it at trial "under a different exhibit number," which resulted in prejudice to Williams. Williams fails to demonstrate that a *Brady* violation occurred.

Bearing in mind that a *Brady* violation occurs when the State wrongfully withholds evidence from the defense prior to trial, Williams's own argument belies that a *Brady* violation occurred in that Williams admits that the statement in question—which appears to be a statement by McConnaha—was not withheld, as it was the subject of a pretrial suppression hearing.[1] *See Mosley*, 2018 Ark. 152, 544 S.W.3d 55. Moreover, a petitioner does not satisfy any ground for granting the writ when he does not present any evidence extrinsic to the record that was hidden from the defense or unknown at the time of trial. *Jones v. State*, 2020 Ark. 338, 609 S.W.3d 375. Williams further admits that the statement was admitted during trial—yet another example that the statement was not withheld.

To the extent Williams contends that admission of McConnaha's statement can be construed as one of prosecutorial misconduct, the argument would also fail. Although Williams argues that the prosecution stated a specific reason for utilizing the statement during the suppression hearing but "lied to the [trial] court about its admission" during the

[1]This court may take judicial notice in postconviction proceedings of the record on direct appeal without need to supplement the record. *Williams v. State*, 2019 Ark. 289, 586 S.W.3d 148.

trial which prejudiced Williams, it is clear from Williams's own assertion that any alleged misuse of the statement was known at the time of trial and was not extrinsic to the record. Assertions of prosecutorial misconduct that could have been raised during the trial are not allegations of material evidence withheld and therefore are not claims that fall within the purview of coram nobis relief. *Chunestudy v. State*, 2021 Ark. 205, 633 S.W.3d 324.

Petition denied.

Special Justice JOSEPH B. HURST, JR., joins.

KEMP, C.J., not participating.

Glenn Adolph Williams, pro se petitioner.

Leslie Rutledge, Att'y Gen., by: *Michael Zangari*, Ass't Att'y Gen., for respondent.