OFFICE OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

JANUARY 9, 2020

RE: SUPREME COURT CASE NO. CR-19-312
PAUL M. GORDON V. STATE OF ARKANSAS

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE ABOVE STYLED CASE:

"APPELLANT'S PRO SE PETITION FOR REHEARING IS DENIED. HART, J., WOULD GRANT."

SINCERELY,

STACEY PECTOL, CLERK

CC: PAUL M. GORDON
BRAD K. NEWMAN, ASSISTANT ATTORNEY GENERAL
HOT SPRING COUNTY CIRCUIT COURT
(CASE NO. 30CR-10-261)

Appendix C C1

FORMAL ORDER

STATE OF ARKANSAS,)

) SCT.

SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON NOVEMBER 21, 2019, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CR-19-312

PAUL M. GORDON APPELLANT

V. APPEAL FROM HOT SPRING COUNTY CIRCUIT COURT – 30CR-10-261

STATE OF ARKANSAS APPELLEE

APPELLANT'S PRO SE MOTIONS TO MODIFY AND SEAL RECORD AND TO FILE BELATED BRIEF. AFFIRMED; MOTION TO MODIFY AND SEAL RECORD DENIED; MOTION TO FILE BELATED BRIEF MOOT. HART, J., DISSENTS. SEE **OPINION AND DISSENTING OPINION** THIS DATE.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED, I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 21ST DAY OF NOVEMBER, 2019.

Stacey Pectol

CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK (W/COPY OF OPINIONS)

CC: PAUL M. GORDON (W/COPY OF OPINIONS)
BRAD NEWMAN, ASSISTANT ATTORNEY GENERAL
HON. CHRIS E WILLIAMS, CIRCUIT JUDGE (W/COPY OF OPINIONS)

Appendix A

SUPREME COURT OF ARKANSAS

No. CR-19-312

PAUL M. GORDON APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered: November 21, 2019 PRO SE APPEAL FROM THE HOT SPRING COUNTY CIRCUIT COURT; PRO SE MOTIONS TO MODIFY AND SEAL RECORD AND TO FILE BELATED BRIEF [NO. 30CR-10-261] HONORABLE CHRIS E WILLIAMS, JUDGE AFFIRMED; MOTION TO MODIFY AND SEAL RECORD DENIED; MOTION TO FILE BELATED BRIEF MOOT.

COURTNEY RAE HUDSON, Associate Justice

Appellant Paul M. Gordon appeals the denial of his pro se petition for writ of error coram nobis filed in the trial court. After the appeal was briefed, Gordon filed a motion in which he sought to modify the record by removing portions that he alleges the trial court incorrectly considered and to seal the record because it includes documents that fully name the victims without redaction. Gordon additionally filed a motion in which he sought permission to file a belated reply brief. We deny his motion to modify and seal the record. Gordon fails to provide an adequate basis to remove any of the documents from the record or to seal it.[1] Because Gordon does not demonstrate that the trial court abused its discretion

[1]There is no provision in our rules for sealing the record to prevent disclosure of a victim's full name on appeal in criminal proceedings when the victim is a minor.

A2

in declining to issue the writ, we affirm, and Gordon's request to file a belated reply brief is moot.

A writ of error coram nobis is an extraordinarily rare remedy. *Wooten v. State*, 2018 Ark. 198, 547 S.W.3d 683. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Id.* 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 circuit court and that, through no negligence or fault of the defendant, was not brought forward before rendition of the judgment. *Id.* The writ is issued only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Wade v. State*, 2019 Ark. 196, 575 S.W.3d 552. It is available to address errors 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. *Id.* The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Wooten*, 2018 Ark. 198, 547 S.W.3d 683. The petitioner must state a factual basis to support his or her allegations of error—and not simply rely on conclusory allegations—in order to state a cause of action that would support issuance of the writ. *See Alexander v. State*, 2019 Ark. 171, 575 S.W.3d 401.

The standard of review of an order entered by the trial court on a petition for writ of error coram nobis is whether the trial court abused its discretion in granting or denying the writ. *Bryant v. State*, 2019 Ark. 183, 575 S.W.3d 547. An abuse of discretion occurs when the court acts arbitrarily or groundlessly. *Id.* There is no abuse of discretion in the

AB

regard— reiterating the claims he made in the petition. Finally, Gordon reasserts his claims from the petition that his mental illness should serve to excuse any delay in bringing the coram nobis petition and establish diligence.

Not every manifestation of mental illness demonstrates incompetence to stand trial. *Bryant*, 2019 Ark. 183, 575 S.W.3d 547. The fact that Gordon had a mental illness does not in itself establish his incompetence, and when a petitioner seeking the writ makes no assertion that there was any evidence concerning his incompetence extrinsic to the record, hidden from the defense, or unknown at the time of trial, grounds based on the petitioner's incompetence fail. *Id.* Gordon did not allege any such hidden evidence of his incompetence. He instead contends that his attorney was ineffective for failing to challenge the report recommending that he was fit to proceed and that the trial court committed error in not sua sponte holding a hearing on the report and his fitness to proceed.

Gordon likens his situation to the one in *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. In *Newman*, there was cognitive impairment that was hidden at the time of trial by scoring errors made during Newman's mental evaluation. The evaluating doctor only later admitted the errors, and that cognitive impairment, in combination with Newman's severe depression, was sufficient to support a claim of impaired thinking and incompetence. 2009 Ark. 539, 354 S.W.3d 61 (acknowledging that without the discovery of the scoring errors, the situation would have been akin to the one in *Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003), in which the petitioner's defense team was aware of the petitioner's history of mental treatments at the time of trial and the factual basis was not sufficient to

A6

support a claim for the writ). Gordon does not allege that he had any similar hidden deficiency or that his IQ was much lower than the evaluation indicated.

Gordon complains that both his attorney and the trial court were aware of his depression and attempted suicide, and he alleges that the facts establishing his depression and attempted suicide alone were sufficient to establish his incompetence, despite a professional report to the contrary. He offers nothing other than his own self-serving evaluation of his mental state at the time that he entered his plea in support of this claim that he was incompetent. The evaluations and reports that he attaches to his petition were either available before trial or were only relevant concerning his claim that his condition delayed bringing the coram nobis petition.

The trial court determined that Gordon was not diligent in bringing the petition. While Gordon argues that the court should not have considered the record of the Rule 37 proceedings, it was not an error for the trial court to consider the complete record in his criminal case, including any transcripts of posttrial hearings or documents that were filed after his trial. The filing of the Rule 37.1 petition alone demonstrates that Gordon had recovered sufficiently from his depression to act by early 2012, more than five years before the coram nobis petition was filed. It was therefore not an abuse of discretion, whether the trial court improperly considered other material in that regard or not, for the trial court to find that the petition should be denied because Gordon had not been diligent. *Makkali v. State*, 2019 Ark. 17, 565 S.W.3d 472 (holding that due diligence is required in making an application for coram nobis relief, and in the absence of a valid excuse for delay, the petition can be denied on that basis alone).

The trial court also correctly found that Gordon had failed "to establish that his depression interfered with his ability to appreciate his litigation position or to make rational decisions concerning the litigation during the entirety of the relevant time period." Given that the trial court had considered the issue of Gordon's competency to proceed, without allegations of facts that showed his incompetency and were unknown or hidden at the time of trial, the issue may not be revived after trial through a petition for the writ. *Westerman v. State*, 2015 Ark. 69, 456 S.W.3d 374. To the extent Gordon raised claims of ineffective assistance and trial error, those claims were not cognizable in proceedings for the writ. *Alexander*, 2019 Ark. 171, 575 S.W.3d 401. His two claims of error falling within the recognized categories of error are both dependent on his allegation that he was not competent, and because he did not allege any hidden fact that may have amplified the depression to the point of being debilitating, he did not state adequate facts to support those claims. Because Gordon's petition was clearly without merit, he cannot show an abuse of discretion in the denial of the petition without a hearing. *Bryant*, 2019 Ark. 183, 575 S.W.3d 547.

Affirmed; motion to modify and seal record denied; motion to file belated brief moot.

HART, J., dissents.

SUPREME COURT OF ARKANSAS

Docket No.: CR-19-312

	Opinion Delivered: November 21, 2019
PAUL M. GORDON APPELLANT V. STATE OF ARKANSAS APPELLEE	APPEAL FROM THE HOT SPRING COUNTY CIRCUIT COURT [NO. 30CR-10-261-1] HONORABLE CHRIS E WILLIAMS, JUDGE DISSENTING OPINION.

JOSEPHINE LINKER HART, Associate Justice

I dissent. Gordon's error coram nobis petition states and supports a cognizable claim for relief, and the circuit court was required to hold a hearing on Gordon's allegations.

Gordon's error coram nobis petition alleged that he was insane when he entered his guilty plea. According to Gordon, he was arrested on December 29, 2010, while a patient at Levi Hospital, a mental health facility in Hot Springs, Arkansas. Gordon states that he was removed from his recovery plan and deprived of his medication while sitting in jail; the medications were later re-started, but with narcotics to keep Gordon sedated. At one point while Gordon was awaiting trial, a detention officer petitioned the court to have Gordon involuntarily committed for mental health treatment. The detention officer's petition noted that Gordon had lost a considerable amount of weight since his incarceration due to lack of eating, that when Gordon was asked why he would not eat, Gordon stated "he just wanted to end it and nobody would let him." The petition also stated that a "concerned cellmate" had produced a plastic wrap containing 28 clonidine hydrochloride and 2 Celexa—"the

assumption was presumably he was going to take all at once to cause his heart to malfunction." Gordon was demonstrably suicidal.

Gordon's attorney did file a motion for a psychiatric evaluation, but the State's examiner determined that Gordon was competent to stand trial. Gordon vigorously disputes both the conclusions and the alleged observations contained in the examiner's report. Gordon specifically contends:

> This report was fabricated by an examiner that created an opinion about me through information that he received from the prosecutor. There was not an examination of my condition at the time. In the very short time that he was in the same room as I, he deliberately avoided acknowledging my need for help, which can be detected in this report. I let him know I was continually having suicidal plans in order to relieve my misery, but he apparently believed I was only trying to get a report from him that would benefit me[.]

Gordon maintains that he never received an actual hearing on his competency to stand trial. *See Jacobs v. State*, 294 Ark. 551, 553–554, 744 S.W.2d 728, 729 (1988) ("[A] due process evidentiary hearing is constitutionally compelled at any time that there is 'substantial evidence' that the defendant may be mentally incompetent to stand trial."). The case proceeded toward trial, and Gordon eventually pled guilty on August 4, 2011, the date his trial had been scheduled. Gordon says that he had unsuccessfully attempted suicide just hours before entering his plea.

Insanity at the time of trial or a plea is supposedly one of the categories for cognizable claims in Arkansas error coram nobis proceedings. *Davis v. State*, 2018 Ark. 290, 558 S.W.3d 366. Gordon's allegations about his depressive mental condition fit squarely within this category of cognizable relief. *See, e.g., Newman v. State*, 2014 Ark. 7 (after error coram nobis petition was denied without hearing by circuit court, reversed and remanded for

hearing by this court, circuit court abused its discretion in determining petitioner had been competent to stand trial). Attached to his petition is a wealth of documentation supporting the allegations contained therein. In this situation, a hearing is required. "If [petitioner fails in his burden of proof, or if the matters proven do not establish compelling circumstances requiring the extraordinary relief afforded by a writ of error coram nobis, then such a determination will be based on a full hearing, consideration of the allegations, and application of the principles of law to the findings of fact." *Scott v. State*, 2017 Ark. 199, at 9–10, 520 S.W.3d 262, 268. Holding otherwise in a case like this continues to eviscerate the writ of error coram nobis. If Gordon's claim does not warrant a hearing, it is difficult to conceive of a claim that would.

I dissent.

IN THE CIRCUIT COURT OF
HOT SPRING COUNTY, ARKANSAS
CRIMINAL DIVISION

PAUL GORDON — PETITIONER

VS. — NO. 30CR-10-261-1

STATE OF ARKANSAS — RESPONDENT

ORDER

Defendant's Petition for Writ of Error Coram Nobis was filed on December 15, 2017, with several delays for request of additional discovery by the defendant for production of documents.

STATEMENT OF FACTS

On December 29, 2010, State charged Paul Gordon with three counts of rape of a minor. The charges arose out of the police's investigation of Gordon for possession of child pornography. See attached Affidavits of probable cause, exhibit #1. On August 4, 2011, Gordon entered an unconditional guilty plea of all three counts and was sentenced to 35 years on each count consecutively for a total of 105 years. See attached Sentencing Order, exhibit #2. In the plea colloquy, Gordon acknowledged the rape charges and had conferred with counsel regarding the charges. See attached Plea Transcript, exhibit #3. After arrest, Gordon initiated contact with a police officer, waived his Miranda Rights, and confessed to the rapes in a custodial statement. See

Appendix B B1

attached #4. Gordon filed in the state court a petition for relief pursuant to Rule 37 on February 1, 2012, 180 days after Judgment, violating the 90 day filing deadline. Gordon alleged and admitted untimely filing and was dismissed on February 9, 2012 by state court; however, court subsequently allowed Gordon to adduce evidence to explain why his petition was untimely on March 28, 2012.

Gordon testified regarding his delay, on February 9, 2012, and March 28, 2012. On the day of the plea August 5, 2011, till 16 weeks post-plea Gordon made the following statements and produced the following facts:

On March 28, 2012, the circuit court took testimony from Gordon regarding his failure to file within the 90 day filing deadline. Gordon testified that after his plea, he was incarcerated at the ADC's mental-health unit. Gordon testified that he had no access to legal materials for four months and that, even after he was able to access legal materials, restrictions on access made it impossible for him to learn the law necessary to timely seek Rule 37 relief.

The second hearing held by state trial court. At the second hearing, the trial court asked Gordon to again explain his untimely Rule 37 petition. Gordon again testified that he was wholly incapable of doing any legal work and had no materials with which to do so, for four months following his plea. On cross-examination, Gordon testified that his restricted mental-health status in the ADC was called "treatment precaution" status. "That's where you're contained where you cannot hurt yourself or anyone else," he explained. He testified that he was in treatment-precaution status until November 30, 2011, at which point he went into "free status, which is actually the

B2

same unit...you get out of your cell into another room with other people," where there are not as many restrictions.

Gordon testified that he had a counselor assigned to him "from day one" of his incarceration. When the prosecutor pointed out that the fact that he wrote letters to his son meant that he must have had access to writing materials during that time, Gordon acknowledged that if "I asked my counselor for something...he'd bring me a couple of sheets of paper."

Gordon then stated that he had a witness – one of his counselors, Debra Corneluis – who would testify that he lacked the mental capability to do any legal work until after he was released from treatment precaution.

Ms. Corneluis testified that she worked with the special-program unit – where inmates who were on treatment-precaution status were housed – for a year and a half. Apparently referring to her start date, she testified that "I had a case load at that time which did not include Mr. Gordon." She testified that one of her job duties as a counselor was to ensure the inmates' requests for legal materials were fulfilled:

> Prosecutor: Would it have been in your job duties if Mr. Gordon needed any legal help, any forms, access to the law library, would that have been part of your duties to assist him in that?
>
> Ms. Corneluis: It would have been my duty to forward his request if he had place a request in writing for that.

She testified that she would have fielded such a request even if it was not made in writing to her. She testified that "if Gordon requests it he does have access to pen and paper," and that he had, in fact, made such requests to her.

B3

She went on to note that assisting prisoners with legal matters was "not part of the mental health program." When asked how the inmates were made aware that they could forward such requests through her, she replied that "that should have been handled in orientation. And, again, mental health does not do orientation." She emphasized that "mental health does talk with our people every day on mental health issues, not legal issues. And if they have a request we are able to help them expedite that request to the proper place." She testified that Gordon never specifically asked her for help in preparing a Rule 37 petition.

The Day of the Plea. On August 5, 2011, the day of his plea, Gordon reported to his evaluator that he "was charged in December and has had two suicide attempts by overdose just before going to county jail," that he "reported being in a psych ward and on psychotropic meds both in the hospital and in county jail." Gordon reported that his latest suicide attempt was the night before his trial and that he had attempted to suffocate himself with a commissary bag. Gordon reported that on the day of the evaluation he felt "helpless and depressed and is not sure what he has to live for since he has a long sentence." The assessment found that Gordon "appears to be somewhat unstable at this time," and determined that Gordon would be placed on treatment-precaution status.

Five Days Post-Plea. On August 10, 2011, five days after his plea, the encounter form reflects that Gordon underwent a psychological evaluation and was diagnosed with major depressive disorder and pedophilia. The doctor who completed the form noted that Gordon had had three suicide attempts during the previous three months, appeared

glum and in ill health, was unable to identify barriers to suicide, but denied present suicidal ideation. The physician determined that Gordon should continue in treatment-precaution status and prescribed Paxil as an antidepressant.

Two Weeks Post-Plea. The next note, dated two weeks after Gordon's plea, on August 19, 2011, notes that Gordon reporter "worsening anxiety, especially in the afternoon," that Gordon denied experiencing hallucinations, "did not voice delusions or display disorganized thought processes," that he had a continuing desire to die, and could not identify barriers to suicide. The physician who completed the form noted, among other things, that Gordon's thought process was rational and goal-directed, although his attitude was withdrawn. The physician ordered that Gordon continue on treatment-precaution status and Paxil. A note dated August 24, 2011, noted a minor change in the time of day that Gordon's Paxil was administered.

Six Weeks Post-Plea: Gordon Brings Up Legal Questions & is Referred to the Law Library. The next two mental-health encounter forms adduced by Gordon at the hearing were dated September 26, 2011, six weeks after his plea. The first, which was another psychiatric evaluation, reported that Gordon had a glum affect, was rational and goal-directed, and had a minimally improved subjective mood since the doctor's previous evaluation (on August 19, 2011). The doctor again noted Gordon's diagnoses of major depressive disorder and pedophilia and continued his Paxil prescription. The second note entered that day indicated that Gordon "was properly attired and showed adequate hygiene," that his "thoughts appeared to be logical, intact and goal-directed," and that his "thought content was remarkable due to persisting reports of

depressive thoughts including thoughts of self-harm." Finally, and importantly, the encounter form noted that Gordon "brought up some legal questions and was referred to the law library."

Twelve Weeks Post-Plea. The next encounter note, on November 1, 2011, indicates that Gordon told the evaluator that he was "the same" and was receiving his medication. The evaluator noted that Gordon's "mood and affect were in the low-normal range, his thoughts appeared to be logical and intact and his thought content was unremarkable." Gordon "was oriented as to place and person, his attitude was cooperative and he showed no overt sign of distress. The evaluator reported that Gordon was "minimally responsive in the joint session and was resistive to engagement efforts," but that he agreed to have a mentoring inmate visit him.

Thirteen Weeks Post-Plea. The following encounter note, dated November 9, 2011, indicates another psychiatric evaluation. Gordon reported to the doctor that "he continues with anxiety, especially in the afternoon and evening. He reports some muscle tension and gritting his teeth and ruminating over the past and the way he was treated." The evaluator reported that one barrier to suicidal thoughts Gordon identified was his belief that it was "possible to prove he didn't do what he has been accused of."

During Gordon's treatment-precaution period, the relevant conditions of his confinement were that, while his access to writing materials and to the law library were not unfettered, materials relating to both would have been provided to him if he had asked for them. During this time, the relevant facts related to Gordon's mental health were that he was undergoing treatment with the anti-depressant Paxil for his major

depressive disorder. Gordon's presentation to the mental-health professionals who treated him in the ADC was consistent with that diagnosis. He was glum and withdrawn, entertained thoughts of self-harm, and was generally resistant to engagement by the prison mental-health staff. But Gordon was also properly groomed and attired, oriented as to time and place, had a rational and goal-directed mindset, and never reported any hallucinations, delusions, or other severe psychotic symptoms. Gordon appreciated that he was imprisoned pursuant to a lengthy prison sentence for multiple rapes. And, importantly, the documents Gordon adduced in support of his claim show that he wanted to contest his conviction, and actually requested legal materials and was referred to the law library. Such a presentation is insufficient to demonstrate an extraordinary circumstance. *See Lyons*, 521 F.3d at 983.

Of course, after the treatment-precaution period, Gordon's access to the law library and his mental health were such that he was able to prepare a *pro se* Rule 37 petition to file in state court. In short, Gordon's proof does not demonstrate the kind of debilitation mental illness, or the type of draconian conditions of confinement, that could constitute an extraordinary circumstance to justify his writ of coram nobis.

As to Gordon's 2nd count of his writ for coerced confession, Gordon claimed that defense counsel was ineffective for failing to investigate and litigate his case so his plea was coerced; but he failed to prove any such supporting evidence, but his confession was redacted by someone. One must be mindful this case was before the court for jury trial on the date he pled. All witnesses were present, and the defendant well knew what might happen. The court was only patient with the defendant in taking his plea to

ensure he clearly understood his rights. In all steps of his waiver he appeared clear minded and knowledgeable. Based on the confession and probable cause statement, it was clear the defendant understood what he was there for and the serious nature of a trial by jury. Defendant was found fit to proceed and understood the criminality of his conduct, on August 4, 2011.

"Mental illness and legal incompetence are not identical, nor are all mentally ill people legally incompetent." *Nachtigall v.* Class, 48 F.3d 1076, 1081 (8th Cir. 1995). Thus, "to be deemed incompetent, the petitioner must have been suffering from a mental disease, disorder, or defect that may have substantially affected his capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation." *See Holt v. Bowersox,* 191 F.3d 970, 974 (8th Cir. 1999). Under these legal standards, the circuit court's ruling that Gordon failed to establish a conclusive showing of incompetence is not erroneous.

Gordon's testimony and documentary evidence fails to establish that his depression interfered with his ability to appreciate his litigation position or to make rational decisions concerning the litigation during the entirety of the relevant time period that Gordon pled or sought state postconviction relief.

Gordon's September 26, 2011, request and referral to the law library, and the testimony of Ms. Cornelius and others that he was able to obtain writing materials, indicate that he did, in fact, understand his litigation position, and was able to do something about it; and those facts support the court's ruling that his writ of coram nobis is not excused by his mental status. Gordon's State Rule 37 was procedurally denied.

Due diligence is required to be met by the defendant seeking writ of error coram nobis but considering all the state court actions he has taken and his writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming he was 1.) incompetent to enter a guilty plea in state court and 2.) he was unconstitutionally confined for mental-health reasons following his sentence for 115 days. All were denied for procedural default case no. 15-1168 submitted January 13, 2016, and filed May 26, 2016, even though the 8th Circuit affirmed the judgment the record shows. For these reasons defendant's writ is denied.

A clear review of the colloquy, it is clear his confession was not coerced and has never presented any proof that he was coerced in to entering the plea. In *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)), a presumption of regularity attaches to a criminal conviction being challenged. Mr. Gordon clearly confessed to the rapes and without coercion entered a plea of guilty to the charges with no pressure from the court, the State, or his own defense counsel. Mr. Gordon must show fundamental error to such an extent to create a reasonable probability that the judgment of conviction would not have been entered.

Before a writ of error coram nobis may be issued, it must appear that the facts as alleged on grounds for its issuance are such that it would have precluded the entry of a judgment had they been available at trial, not just facts that might produce a different result. *See Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). Furthermore, Gordon has presented no proof that he has diligently pursued his writ of error coram nobis. Seven years is not due diligence in seeking a writ of error coram nobis, considering all the other motions he filed in state and federal court. Therefore, his writ

of error coram nobis is denied.

IT IS SO ORDERED.

Chris E Williams

CHRIS E WILLIAMS
CIRCUIT JUDGE

12/17/18

DATE

Distribution to:

Mr. Gregory Crain, Defense Counsel
Mr. Paul Gordon, Petitioner/Defendant
Ms. Teresa Howell, Prosecuting Attorney

B 10