

SUPREME COURT OF ARKANSAS

No. CR-00-587

Opinion Delivered: February 17, 2022

LEONARD NOBLE

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

PRO SE FOURTH PETITION TO
REINVEST JURISDICTION IN THE
TRIAL COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS; MOTION FOR
LEAVE TO FILE SURRESPONSE
[SEBASTIAN COUNTY CIRCUIT
COURT, GREENWOOD DISTRICT,
NO. 66GCR-98-72]

PETITION DENIED; MOTION
DENIED.

RHONDA K. WOOD, Associate Justice

Petitioner Leonard Noble brings this pro se fourth petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. In his petition, Noble alleges that the State falsified or failed to disclose evidence against him. He also alleges testimony about hair-comparison analysis was improperly admitted at his trial because hair-comparison science is imprecise and suspect.¹ We deny Noble's petition because it fails to contain facts that would support a cognizable claim for issuance of the writ.

I. Background

In 1999, a jury found Noble guilty of residential burglary and rape, and he was sentenced as a habitual offender to an aggregate term of 900 months' imprisonment. The

¹ Noble has also filed a motion for leave to file a surresponse. We deny this motion because the prevailing rules of procedure do not allow such a response

Dispositio (C) page 1

Arkansas Court of Appeals affirmed. *Noble v. State*, CR-00-587 (Ark. App. Sept. 19, 2001) (unpublished) (original docket no. CACR 00-587). Noble then petitioned three times for leave to reinvest jurisdiction in the trial court to proceed with a petition for coram nobis relief. We have denied each petition. See *Noble v. State*, 2016 Ark. 463, 505 S.W.3d 687 (per curiam); *Noble v. State*, 2015 Ark. 215, 462 S.W.3d 341 (per curiam); *Noble v. State*, 2014 Ark. 332, 439 S.W.3d 47 (per curiam).

II. Nature of the Writ

Once a case has been affirmed on direct appeal, this court must grant permission before a trial court can hear a writ of error coram nobis. *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). There is a presumption in coram nobis proceedings that the judgment of conviction is valid. *Green v. State*, 2016 Ark. 386, 502 S.W.3d 524. The writ functions to secure relief from a judgment when some fact existed that would have prevented the judgment's rendition had the fact been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition. *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.

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 most commonly in 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. However, we have also extended the writ under the “rule of reason” where (1) the State presented expert scientific opinion at trial; (2) the expert was an agent of the government; and (3) that same government later repudiates the expert’s scientific opinion. The rule of reason “is simply that the writ ought to be granted or else a miscarriage of justice will result.” *Strawhacker v. State*, 2016 Ark. 348, at 7, 500 S.W.3d 716, 720 (cleaned up).

A *Brady* claim of material evidence withheld from the defense falls within the purview of coram nobis relief. See generally *Brady v. Maryland*, 373 U.S. 83 (1963); *Williams v. State*, 2021 Ark. 190, 632 S.W.3d 734. Before the court can determine whether a *Brady* violation has occurred, the petitioner must first establish that the material was available to the State before trial and that the defense did not have it. *Id.*

III. Claims for Relief

Noble’s petition consists of transcribed testimony introduced at his trial. As to each claim that the State withheld certain evidence, Noble makes self-defeating arguments by referencing points at trial where that same evidence was discussed. Thus, he cannot establish that he lacked material evidence at the time of his trial. Noble also claims the State failed to disclose other evidence; but these claims fail too because they are conclusory and fail to identify what evidence the State withheld and whether that evidence would have been exculpatory. Nor does Noble explain how he was prejudiced. Rather, Noble’s petition speculates that certain unidentified evidence must have been withheld because he can see no other hypothesis.

Last, Noble raises a claim about the hair-comparison testimony. He contends that hair-comparison testimony has been shown to be unreliable for identification. In two other cases, we reinvested jurisdiction for a trial court to consider granting the writ based on exaggerated scientific correlations linking a defendant to a crime through hair-comparison testimony. See, e.g., *Strawhacker*, *supra*; *Pitts v. State*, 2016 Ark. 345, 501 S.W.3d 803. However, this did not happen at Noble's trial. The expert from the state crime lab testified that of all the hairs and fibers collected at the scene, only one had similar characteristics to Noble's hair sample.² Even then, the expert was cautious and testified that 10,000 individuals could have had similar characteristics and that hair analysis was not a basis to identify someone. The testimony was tempered, not exaggerated, and, importantly, has not been repudiated. Cf. *Strawhacker*, 2016 Ark. 348, at 3, 500 S.W.3d at 718 (noting Department of Justice had notified defendant that its expert "overstated the conclusion that may be appropriately drawn" from hair-comparison analysis).

Noble does not meet the criteria for granting the petition for writ of error coram nobis under the rule of reason or any other ground.

Petition denied; motion denied.

²This court may take judicial notice in postconviction proceedings of the record on direct appeal without the need to supplement the record. *Lowery v. State*, 2021 Ark. 97, at 8 n.2, 621 S.W.3d 140, 146.

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 APRIL 14, 2022, AMONGST
OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CR-00-587

PETITIONER

V. APPEAL FROM SEBASTIAN COUNTY CIRCUIT COURT, GREENWOOD DISTRICT -
66GCR-98-72

RESPONDENT

PETITIONER'S PRO SE PETITION FOR REHEARING IS DENIED.

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 14TH DAY OF APRIL, 2022.

CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK

CC: LEONARD NOBLE
JACOB H. JONES, ASSISTANT ATTORNEY GENERAL
HON. GREG MAGNESS, CIRCUIT JUDGE

(F) page 1)

JUDGMENT AND COMMITMENT ORDER
IN THE CIRCUIT COURT OF SEBASTIAN, ARKANSAS
GREENWOOD DISTRICT II DIVISION

On October 15, 1999, the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

DEFENDANT'S FULL NAME: LEONARD NOBLE
DATE OF BIRTH: 4-22-65
RACE: WHITE
SEX: MALE
ARREST TRACKING #: 3739593
ID #:
DEFENDANT'S ATTORNEY: PAUL HUGHES
PROSECUTING ATTORNEY OR DEPUTY: WENDY JOHNSON
CHANGE OF VENUE FROM:

FILED
GREENWOOD DIST.
1999 OCT 22 PM 12 11
CIRCUIT CLERK S.E.B. CO.

Defendant was represented by ☐ private counsel ☐ appointed counsel
☒ public defender ☐ himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:
☐ Yes ☒ No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.O.C.) for the term specified on each offense shown below:

TOTAL NUMBER OF OFFENSES: 2

Offense # 1

C.A. # of Offense: 5-14-103

Name of Offense: RAPE

Seriousness Level of Offense:

Criminal History Score:

Presumptive Sentence:

Sentence is a departure from the sentencing grid. ☐ Yes ☐ No.

Offense is a ☒ felony ☐ misdemeanor.

Classification of offense: A B C D U ☒ X Y

Sentence imposed: 900 months.

Suspended imposition of sentence: ☐ months.

Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection ☐ (a) ☒ (b) ☐ (c) ☐ (d).

Sentence was enhanced by A.C.A. _____

Defendant ☐ attempted ☐ solicited ☐ conspired to commit the offense

(A) P. 24 10P4

BK 0540 PG 2231

Offense date: 7-22-98

Docket #: CR-98-72-G

Number of counts: 1

Defendant was on ___ probation X parole at time of conviction.

Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. ___ Yes ___ No.

Victim of the offense was X under ___ over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

___ negotiated plea of guilty/ nolo contendere.

___ plea directly to the court of guilty/nolo contendere.

Defendant

___ entered a plea as shown above and was sentenced by a jury.

___ was found guilty of said charge(s) by the court.

X was found guilty at a jury trial.

Offense # 2

A.C.A. # of Offense: 5-39-201

Name of Offense: RESIDENTIAL BURGLARY

Seriousness Level of Offense:

Criminal History Score:

Presumptive Sentence:

Sentence is a departure from the sentencing grid. ___ Yes ___ No.

Offense is a X felony ___ misdemeanor.Classification of offense: ___ A X B ___ C ___ D ___ U ___ Y

Sentence imposed: ___ 480 ___ months.

Suspended imposition of sentence: ___ months.

Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection ___ (a) X (b) ___ (c) ___ (d).

Sentence was enhanced by A.C.A. _____.

Defendant ___ attempted ___ solicited ___ conspired to commit the offense.

Offense date: 7-22-98

Docket #: CR-98-72-G

Number of counts: 1

Defendant was on ___ probation X parole at time of conviction.

Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of

sentence. ___ Yes ___ No.

~~Victim of the offense was X under ___ over the age of 18 years.~~

Defendant voluntarily, intelligently, and knowingly entered a

___ negotiated plea of guilty/nolo contendere.

___ plea directly to the court of guilty/nolo contendere.

Defendant

(A) p. 25

204

_____ entered a plea as shown above and was sentenced by a jury.
 _____ was found guilty of said charge(s) by the court.
X _____ was found guilty at a jury trial.

Indicate which sentences are to run concurrently: with each other.

Death Penalty: Execution Date:

Total time to serve on all offenses listed above: 900 months.

Time is to be served at: X Department of Correction _____ Regional Punishment Facility.

Prison time credit: 88 days.

The Defendant was convicted of a target offense under the Community Punishment Act. The Court hereby orders that the Defendant be judicially transferred to the Department of Community Punishment (D.C.P.). _____ Yes
X No

Failure to meet the criteria or violation of the rules of the D.C.P. could result in transfer to the A.D.O.C.
 Fines \$ _____ Court Costs \$ _____; to be paid at a rate of \$ _____ per month beginning the first month following restitution in full.

Judgment of restitution is hereby entered against the Defendant in the amount and terms as shown below:
 Amount \$ _____ Due immediately _____ Installments of: \$ _____ to be paid starting _____ and continuing each month thereafter until paid in full.

Payment to be made to: PROSECUTING ATTORNEYS OFFICE

multiple beneficiaries, give names and show payment priority:

Defendant is a Child Sex Offender as defined in A.C.A. 12-12-902

_____ Yes _____ No.

Defendant was informed of the right to appeal: X Yes _____ No.

Appeal Bond: \$ NO APPEAL BOND SET.

The County Sheriff is hereby ordered to transport the Defendant to X the Arkansas Department of Correction _____ Regional Punishment Facility.

The short report of circumstances attached hereto is approved.

Date: 10/22/99 Circuit Judge: JAMES R. MARSCHEWSKI

Signature: J. Marschewski

Certify this is a true and correct record of this Court.

Date: 10/22/99 Circuit Clerk/Deputy: Dina R. Cee

(1)

Revised 7/96

(A) p. 26

30/4



ADDITIONAL TERMS/CONDITIONS OF DISPOSITION

_____ Additional checks that come in may be added by separate order and/or
_____ specific amount to be set by separate order

_____ Restitution JOINT/SEVERAL with co-defendant(s).

_____ \$5.00 administrative fee to be paid with each fine payment.

_____ Adult probation for _____ yrs/mths, pay \$20 mthly fee beg. _____

_____ Forfeiture of monies \$ _____, _____ payable _____
_____ seized at arrest.

_____ Forfeiture of property _____

_____ Community service work _____ hrs/days; with _____ hrs suspended to be completed
within _____ days.

_____ Landfill work _____ days beginning _____
To be served _____ from home _____ from SCDC

_____ Surrender for ADC/RPF/SCDC sentence on _____ at _____ am/pm.
Bond provision: _____

_____ Boot camp authorized.

_____ Counseling/Rehab for _____ yr/mth at _____
Progress reports to _____ Court _____ Prosecutor

_____ Defendant to complete Long Term Rehabilitation Program.

_____ Victim _____ approves of disposition _____ appears _____ defendant to have no offensive
contact with victim.

_____ Driver's license suspended 6 months; _____ w/o permit
_____ with permit for driving _____

☒ _____ Suspended time conditioned upon good behavior.

☒ _____ Any violation of the terms and conditions of this suspended imposition of sentence may result in a
revocation and/or a finding of contempt of court.

☒ _____ OTHER: Defendant is to be sent back to Oklahoma Dept. of Correction, when he has completed his ti
ie will be brought to Arkansas Dept. of Correction to begin his time.

(A) p. 27

4 of 4