

SUPREME COURT OF ARKANSAS

Thompson v. State

2017 Ark. 328 (2017) · No. CR-10-1333 · Decided November 30, 2017

SUMMARY

The Supreme Court of Arkansas denied James Ray Thompson’s pro se petition to reinvest the trial court with jurisdiction to consider a writ of error coram nobis and denied his motion for leave to reply. The court held that the alleged Brady evidence—the victim’s 911 recording—was not suppressed or extrinsic to the record because it was played and admitted at trial, and it did not establish prejudice or a fundamental error warranting coram nobis relief.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Courtney Hudson Goodson
JURISDICTION	Arkansas
DECIDED	November 30, 2017
DOCKET	CR-10-1333
DISPOSITION	other
PROCEDURAL POSTURE	Thompson petitioned the Supreme Court of Arkansas for permission to reinvest the trial court with jurisdiction to consider a petition for writ of error coram nobis and moved pro se for leave to reply to the State’s response.
STANDARD OF REVIEW	The court reviewed the trial record to determine whether Thompson demonstrated a fundamental error of fact extrinsic to the record that would have prevented rendition of the judgment and, through no negligence or fault of his own, was not brought forward before judgment.
PRECEDENTIAL VALUE	published opinion
PARTIES	James Ray Thompson v. State of Arkansas

TOPICS

- state post-conviction relief
- post-conviction relief
- criminal procedure
- appellate procedure
- due process

PRACTICE AREAS

post-conviction relief

criminal procedure

appellate procedure

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether Thompson demonstrated a fundamental error extrinsic to the record warranting permission to pursue a writ of error coram nobis based on alleged prosecutorial suppression of the victim's 911 recording and portions of an investigative file.
2. Whether the alleged suppression established a meritorious Brady violation supporting coram nobis relief.
3. Whether Thompson was entitled to file a pro se reply to the State's response.

HOLDINGS

1. Thompson failed to demonstrate a fundamental error of fact extrinsic to the record that would have prevented rendition of the judgment; therefore, permission to pursue coram nobis relief was denied.
2. Thompson failed to allege facts establishing a meritorious Brady violation because the victim's recorded statement was not exculpatory, was not suppressed, and did not prejudice the trial outcome.
3. Thompson's claims that the prosecutor was required to provide a transcript of the 911 recording and misled the jury in closing argument were unavailing and did not warrant coram nobis relief.

KEY QUOTATIONS

"A writ of error coram nobis is an extraordinarily rare remedy." (at 2)

"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." (at 2)

"To establish a Brady violation, three elements are required: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued." (at 3)

FACTUAL BACKGROUND

Thompson was convicted of raping the victim twice. He claimed that the prosecutor withheld a recording of the victim's 911 call, particularly her initial statement that someone had 'tried' to rape her, and that the State also withheld portions of an investigative file. The trial record showed that the entire 911 recording was played in open court and admitted into evidence, while the allegedly withheld pages of the investigative file were introduced at a later pretrial hearing. The recording was consistent with the victim's trial testimony, and the trial evidence also included Thompson's admissions and DNA evidence linking him to the rapes.

PROCEDURAL HISTORY

A jury convicted Thompson of two counts of rape and sentenced him to two consecutive ten-year terms of imprisonment. The Arkansas Court of Appeals affirmed the convictions and sentences. Thompson then sought

coram nobis relief in the Supreme Court of Arkansas, which denied both his petition for permission to proceed in the trial court and his motion for leave to reply.

DISPOSITION

other

CASES CITED

- Brady v. Maryland, 373 U.S. 83 (1963)
- Thompson v. State, 2011 Ark. App. 605
- Roberts v. State, 2013 Ark. 56, 425 S.W.3d 771
- Westerman v. State, 2015 Ark. 69, 456 S.W.3d 374
- Howard v. State, 2012 Ark. 177, 403 S.W.3d 38
- Penn v. State, 282 Ark. 571, 670 S.W.2d 426 (1984)

OPINION

GOODSON, J.

Cite as 2017 Ark. 328 SUPREME COURT OF ARKANSAS. No. CR-10-1333 Opinion Delivered November 30, 2017 JAMES RAY THOMPSON PETITIONER PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL V. COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS; PRO SE MOTION FOR STATE OF ARKANSAS LEAVE TO REPLY TO STATE’S RESPONDENT RESPONSE [MILLER COUNTY CIRCUIT COURT NO. 46CR-10-97] PETITION DENIED; MOTION DENIED.

COURTNEY HUDSON GOODSON, Associate Justice Pending before this court is petitioner James Ray Thompson’s pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis and a pro se motion to reply to the State’s response to his coram nobis petition. Thompson’s primary claim for coram nobis relief is based on an allegation that the prosecutor withheld material evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963).

The material evidence that Thompson asserts was withheld consisted of a recording of the victim’s call to a 911 dispatcher wherein she stated that someone “tried” to rape her, which Thompson maintains is exculpatory and impeaching.¹ Thompson contends that a copy of the audio
¹Thompson also alleges that the state withheld pages thirty-nine and forty of a seventy-four page investigative case file introduced into evidence during a pretrial hearing recording of the victim’s call to 911 was not disclosed in pretrial discovery, nor was a transcript of that recording produced either before or during the trial.

We find from a review of the trial record that Thompson failed to demonstrate a fundamental error extrinsic to the record that would have prevented rendition of the judgment; therefore, we deny both the petition and his pro se motion to file a reply to the State's response. A jury convicted Thompson of two counts of rape, and he was sentenced to two ten-year consecutive terms of imprisonment.

The Arkansas Court of Appeals affirmed the convictions and sentences. *Thompson v. State*, 2011 Ark. App. 605. 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. *Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771.

A writ of error coram nobis is an extraordinarily rare remedy. *Id.* Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Id.*; *Westerman v. State*, 2015 Ark. 69, 456 S.W.3d 374.

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. *Roberts*, conducted on June 15, 2010, and speculates that these two pages likely contained a transcript of the victim's 911 call.

A review of the record demonstrates that the allegedly withheld evidence consisting of pages thirty-nine and forty of the investigative file were included as exhibit two in a subsequent pretrial hearing conducted on August 20, 2010. Page thirty-nine is a waiver of rights form signed by Thompson and page forty is a consent to search form also signed by Thompson.

2 2013 Ark. 56, 425 S.W.3d 771. The petitioner has the burden of demonstrating a fundamental error of fact extrinsic to the record. *Id.* 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.

Id.; *Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38. A review of the trial transcript reveals that the prosecutor played the entire recording of the victim's 911 call at Thompson's trial.² Moreover, the audio recording was admitted into evidence and remains in the record lodged on direct appeal. Based on the trial record, the jury heard and considered the victim's statements to the 911 dispatcher before rendering its guilty verdict.

Furthermore, the recording itself reveals that, while the victim initially stated that Thompson tried to rape her outside her apartment, when asked by the dispatcher if the assailant had raped her, she answered "yes," and explained that she had been raped inside her apartment.

The victim's statement to the dispatcher was entirely consistent with her trial testimony, wherein she described being confronted by Thompson outside her 2 apartment, and when she resisted his advances, Thompson threatened her at gunpoint, forced her inside her apartment, and raped her.³ To warrant coram nobis relief, Thompson has the burden of demonstrating a fundamental error extrinsic to the record that would have prevented rendition of the judgment had it been known and, through no fault of Thompson's, was not brought forward before rendition of judgment.

Roberts, 2013 Ark. 56, 425 S.W.3d 771. Moreover, the fact that a petitioner merely alleges a Brady violation is not sufficient to provide a basis for error coram nobis relief. See *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (stating that a mere naked allegation that a constitutional right has been invaded will not suffice to warrant coram nobis relief).

To establish a Brady violation, three elements are required: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. Howard, 2012 Ark. 177, 403 S.W.3d 38. Thompson fails to allege sufficient facts to establish an essential element warranting coram nobis relief in that the victim's recorded statement was not extrinsic to the record and did not prevent the rendition of the verdict.

Roberts, 2013 Ark. 56, at 11, 425 S.W.3d at 778. If, during his trial, Thompson was unaware of the victim's allegedly inconsistent statement, it was the result of his own inadvertence. For the same reasons, Thompson fails to state sufficient facts to establish a meritorious Brady claim because the victim's statement³ In addition to the victim's testimony, the evidence adduced at Thompson's trial included Thompson's statements to investigators admitting to the crimes and DNA evidence linking Thompson to the rape.

⁴ was not exculpatory, was not suppressed, and did not prejudice the outcome of the trial. Howard, 2012 Ark. 177, 403 S.W.3d 38. Thompson's additional claims that the prosecutor was required to provide a transcript of the 911 recording and misled the jury in closing argument by emphasizing the consistency of the victim's statements to the dispatcher and her trial testimony are equally unavailing.

Petition denied; motion denied. 5