
IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PHILIP R. WORKMAN v. STATE OF TENNESSEE

**Appeal by Permission from the Court of Criminal Appeals
Criminal Court for Shelby County
No. P-3908 John P. Colton, Jr., Judge**

No.W2001-00774-SC-R11-PD - Filed March 30, 2001

RILEY ANDERSON, C.J., and WILLIAM M. BARKER, J., dissenting.

_____ On March 28, 2001, two days before his scheduled execution, Philip R. Workman filed in the Criminal Court for Shelby County, a motion to reopen post-conviction petition, a request for declaratory judgment, a petition for writ of error coram nobis and a motion for stay of execution. After a hearing on March 29, 2001, the trial court denied relief on all claims. The Court of Criminal Appeals affirmed. This Court granted Workman's application for permission to appeal. A majority of this Court has determined that Workman is entitled to a hearing on his petition for writ of error coram nobis. For the reasons stated below, we dissent and would affirm the judgments of the lower courts.

Motion to Reopen

Workman filed a motion to reopen his post-conviction petition, asserting that "new scientific evidence establish[es] that [he] is actually innocent of [felony murder]." Tenn. Code Ann. § 40-30-217(a)(2). Specifically, Workman contends (1) that an x-ray, which the State provided to him on March 2, 2000, demonstrates that the bullet that killed Memphis Police Lieutenant Ronald Oliver did not fragment, but instead emerged from his body intact; and (2) that based upon Dr. Kris Sperry's affidavit interpreting the x-ray, Workman did not shoot Lt. Oliver.

Assuming, without deciding, that this evidence constitutes "new scientific evidence," we would conclude that the evidence does not establish by clear and convincing proof that he "is actually innocent." The x-ray evidence and Dr. Sperry's affidavit do not conclusively establish that Workman did not fire the fatal shot. Instead, this evidence merely propounds a different theory than that presented at the original trial. Like the petitioner in Herrera v. Collins, 506 U.S. 390, 418, 113 S.Ct. 853, 870, 122 L.Ed.2d 203 (1993), Workman

does not appear before us an innocent man on the verge of execution. He is instead a legally guilty one who, refusing to accept the jury's verdict, demands a hearing in which to have his culpability determined once again.

Id. at 419-420, 113 S.Ct. at 870 (O'Connor, J., concurring).

Furthermore, we agree with the trial court that this evidence proves nothing that was not already known from the original autopsy and photographs. In affidavits prepared prior to review of the x-ray, Dr. Sperry concluded that the bullet that struck Lt. Oliver exited in once piece, and therefore, did not come from Workman's gun. Accordingly, the x-ray does nothing more than corroborate Dr. Sperry's previous affidavits and does not therefore constitute "new scientific evidence" within the meaning of the statute which would be sufficient alone to establish Workman's innocence.

Declaratory Judgment

Additionally, Workman filed a complaint for declaratory judgment under Tenn. Code Ann. § 29-14-102(a), which provides that "[c]ourts of record within their respective jurisdictions have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed." He sought a declaration that Tennessee Constitution, Art. I §§ 8, 16 and 32 prohibit the execution of a person who presents substantial evidence that he is factually innocent of capital murder, and that the same provisions of the Tennessee Constitution require an evidentiary hearing when a person claims actual innocence and alleges that there has been fraudulent concealment of exculpatory evidence by state officials. Essentially, Workman is claiming that the Tennessee Constitution prohibits the execution of an innocent person.

In support of these claims, Workman submits the "new scientific evidence" discussed above and evidence that Harold Davis, a witness who testified at the original trial, has recanted his testimony. Assuming, without deciding, that our state constitution prohibits the execution of an innocent person, we would conclude as stated in the previous section that the evidence does not establish that Workman is actually innocent.

Writ of Error Coram Nobis

In his petition for writ of error coram nobis, Workman alleges that he should be granted a new trial based upon grounds of newly discovered evidence. The primary factual bases alleged in support of these grounds are (1) new scientific evidence that Workman did not fire the fatal shot that killed Lt. Oliver, and (2) a statement by Harold Davis recanting his trial testimony.

The writ of error coram nobis is an extraordinary remedy available to those convicted of crimes who can show that newly discovered evidence relating to matters litigated at the trial may have resulted in a different judgment had it been presented at the trial. Tenn. Code Ann § 40-26-105. See State v. Hart, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995).

Judge Colton denied the petition for writ of error coram nobis because it was filed outside the one-year statute of limitations. See State v. Mixon, 983 S.W.2d 661, 670-671 (Tenn. 1999) (citing Tenn. Code Ann. §27-7-103). The decision to grant or deny a petition for writ of error coram nobis rests within the sound discretion of the trial court. State v. Hart, 911 S.W.2d at 375. Workman concedes that he did not timely file his petition. However, citing Burford v. State, 845 S.W.2d 204 (Tenn. 1992), he contends that applying the statute of limitations would be unconstitutional in this case because he had neither the x-ray evidence nor Davis' statement recanting his trial testimony within the limitations period. In Burford, this Court held that the application of the post-conviction statute of limitations in certain limited situations might violate due process. Id. at 208.

Assuming, without deciding, that the statute of limitations was tolled during the time that Workman was unaware of this evidence, the record in this case shows that more than one year, the time provided by the statute of limitations, has passed since he first became aware of the evidence. Accordingly, he has had a reasonable opportunity to present his claims, and, therefore, due process is not implicated.

Furthermore, there is no indication that Workman has been denied the opportunity to present these claims in a timely manner due to the possible misrepresentation of his counsel. Cf. Williams v. State, __ S.W.3d __ (March 29, 2001). Indeed, the delay in filing these claims appears to us to be a tactical decision on the part of counsel to obtain delay in the execution of his sentence. Workman is bound by the actions of his attorneys in taking this approach. See House v. State, 911 S.W.2d 705, 714 (Tenn. 1995).

Motion for Stay of Execution

Inasmuch as we would find no merit to any of Workman's claims for relief, we would deny the motion for stay of execution.

RILEY ANDERSON, CHIEF JUSTICE

WILLIAM M. BARKER, JUSTICE