IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS PETITIONER	]	
VS.	]	NO. 17-CR-10-PC
STATE OF TENNESSEE	]	

FILED 13 DAY OF Jan, 2025 AT 3:00 AM/PM
TAMMIE WOLFE, CLERK
BY Terri Wright, Deputy CLERK

PETITIONER's RESPONSE TO STATE's MOTION TO DISMISS PORTIONS OF THE POST CONVICTION RELIEF

Comes now the Defendant/Petitioner, by and through Counsel, and files the following response to the State's Motion to Dismiss portions of the Post Conviction Relief.

Defense will attach the three pronged approach in the order in which the State has presented such claims:

I.

Coram Nobis Claims do not bar "previously determined" claims and/or are barred on *res judicata* grounds

The State attacks the following claims for relief on the basis that said claims were "previously determined" by this Court's September 10th, 2024, ruling applying the statute of limitations doctrine to the Defendant's Writ of Error Coram Nobis Claims:

¶17: an overview of the case with the understanding that Jason Autry tainted irrevocably the fairness of the trial and proceedings by committing perjury to avoid the death penalty.

¶19: this is largely irrelevant at this point because the Court did not dispose of the Coram Nobis case based on the Defendant having the ability to present those issues in the underlying

proceeding. However, the allegation here is that Defense Counsel should have penetrated Jason Autry's anticipated and actual trial testimony for being the purchased perjury that it was.

¶19 (a) is abandoned entirely in this PCR proceeding;

¶ 19 (b) and (c) is the allegation that Ms. Thompson poorly cross examined Jason Autry.

¶35, 35(a) are the allegations that defendant specifically is seen on an ATM recorder the morning of the victim's abduction and killing.

¶ 36 is the request to merely certify to this Court that Jason Autry's recantation and his forthcoming testimony, taken with the other evidence that tied Jason Autry to being with Zachary Adams on April 13th, 2011, proves that he is actually innocent.

¶37 is just a summary of ¶35 and 36 being judicially cognizable in this PCR proceeding.

At the onset, the State and Defendant have a fundamentally different reading of TN Sup. Ct. Rule 28 §2 (e) which provides that "a claim for relief is **Previously Determined** if a court of competent jurisdiction has ruled on the merits of the claim after a full and fair hearing **at which petitioner is afforded the opportunity to call witnesses and present evidence.**" (emphasis added)

It is hard to fathom the State's position: the State successfully dismissed the Writ of Error *not* on the ground that Jason Autry testified truthfully at trial—instead and only instead—the Court dismissed the petition because the video of Autry's recanting and petition relying on it did not establish by clear and convincing evidence Zachary Adams' "actual innocence," and under the new *State v. Clardy*, 691 S.W.3d 390 (Tenn. 2024) standard, the case was dismissed without an evidentiary hearing by virtue of the statute of limitations.

Perhaps a review of the State's own filing might jog the Court's memory as to why there was never a "full and fair hearing at which petitioner is afforded the opportunity to call witnesses and present evidence."

IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS,
PETITIONER,

vs.

STATE OF TENNESSEE,
RESPONDENT.

No. 17-CR-10-PC

FILED 9 DAY OF May 2024 AT 8:30 AM/PM
TAMMIE WOLFE, CLERK
BY [illegible] CLERK

MOTION TO DISMISS PETITIONER ADAMS' WRIT OF ERROR CORAM NOBIS WITHOUT AN EVIDENTIARY HEARING

It is difficult to grasp the State's contention that somehow the Coram Nobis court held an evidentiary hearing or rested its ruling on any other ground other than the statute of limitations.

Putting aside the plain language of Rule 28, the phrase "on the merits" has been clearly defined for this Court within this statue. The Defendant further questions the applicability of *res judicata* outside the plain terms of Rule 28. The provisions of the Post-Conviction Procedure Act do not, as a matter of law, bar multiple suits attacking the same conviction. [See *Swanson v. State*, 749 S.W.2d at 733-35.] In the case of [Swanson] our Supreme Court held:

> . . .The Act . . . does not necessarily contemplate that one and only one post-conviction petition will be allowed to any one petitioner in every case. The terms of the statute itself permit more than one petition when justified. Like any legislation, the Act is to be construed in pari materia to achieve its intended purposes.

Laney v. State, 826 S.W.2d 117, 118 (Tenn. 1992).

The problem with the State's argument here is multifaceted. In the first place, the Supreme Court specifically addressed the ways in which *res judicata* would apply in this case pursuant to Rule 28.

It is stipulated this Court's ruling on Defendant's Coram Nobis claim was a final judgment from a Court of Competent Jurisdiction. It was not, however, "on the merits" nor involving the same cause of action as it relates to these two proceedings.

"On the Merits"

From *Britt v. Usery*, 2024 Tenn. App. LEXIS 24, *29-32 (Tenn. Ct. App. 2024): "[a]ddressing the "on the merits" language in the context of *res judicata* determination, the Tennessee Supreme Court interpreted the "operates as an adjudication on the merits" as akin to a with prejudice determination. In *Regions Bank v. Prager*, the Tennessee Supreme Court assessed whether a trial court's dismissal for failure to prosecute "otherwise specified" that it was not on the merits for purposes of *res judicata*. 625 S.W.3d 842 (Tenn. 2021). In Prager, the trial court dismissed a case for failure to prosecute and orally specified that the dismissal would not bar the plaintiff from refiling the case. Id. at 845. The Court noted that the language of Tenn. Rule Civ. P. 41.02(3) "certainly is clear that such a dismissal operates as an adjudication on the merits." Id. at 850. But, due to the trial court's ruling that the dismissal would not bar a refiling of the suit, the Tennessee Supreme Court held that the order otherwise specified it was not on the merits under Rule 41.02(3). Id. at 852. Therefore, because the original dismissal was not on the merits, *res judicata* did not bar the subsequent refiling. Id. Similar to *Henry v. Goins*, 104 S.W.3d 475 (Tenn. 2003), the analysis interpreted the "on the merits" language of Rule 41.02(3) to mean something akin to "with prejudice," rather than going to the underlying substantive merits. Id.; see also *Patrick*

v. Dickson, 526 S.W.2d 449, 453 (Tenn. 1975) (holding that a dismissal for failure to prosecute was not "on the merits" and that the phrase "with prejudice" was a nullity).

The federal courts have similarly noted that "on the merits" has two distinct meanings and purposes. One usage of "on the merits," the more prototypical one, refers to resolution of a case upon its substantive merits, **rather than a procedural basis**, while the other usage of "on the merits" is more limited in scope serving as an indication that an adverse judgment is entered with, rather than without, prejudice. The United States Supreme Court has interpreted the "adjudication upon the merits" language found within Federal Rule of Civil Procedure 41(b) as using the language in the narrower sense, that it simply means "with prejudice." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505-06, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001). Explaining the meaning of "adjudication upon the merits" in the context of Rule 41(b), the Supreme Court stated, that an adjudication upon the merits, as used in Rule 41(b) "is the opposite of [*31] a dismissal without prejudice—that is, it is a dismissal that prevents refiling of the claim in the same court." Id. at 505 (quoting 18 Wright & Miller § 4435, at 329, n. 4 for the proposition that "[b]oth parts of Rule 41 . . . use the phrase 'without prejudice' as a contrast to adjudication on the merits," and 9 Wright & Miller, § 2373, at 396, n. 4 for the proposition that "'[W]ith prejudice' is an acceptable form of shorthand for 'an adjudication upon the merits'"). Exploring the two different meanings, Justice Scalia, writing for the Supreme Court in Semtek International Incorporated, drew a divide between the "with prejudice" understanding and what he described as "[t]he original connotation of an 'on the merits' adjudication," which "is one that actually 'pass[es] directly on the substance of [a particular] claim' before the court." 531 U.S. at 501-02 (quoting Restatement (Second) of Judgments § 19, Comment a, p. 161 (1980)). Justice Scalia observed that the latter "connotation remains common to every jurisdiction of which we are aware." Id. at 502; see also *Krekelberg v.*

City of Minneapolis, 991 F.3d 949, 954-55 (8th Cir. 2021) (stating that "the Supreme Court explained in Semtek . . . . that the phrase 'adjudication on the merits' in Rule 41(b) means 'with prejudice' and should not be equated with a 'prototypical judgment on the merits'—'one in which the [*32] merits of a party's claim are in fact adjudicated for or against the party after trial of the substantive issues.'"). In sum, on the merits has two distinct meanings. One is related to a determination turning upon the substance of a claim, and the other is a means of communicating that a determination is with prejudice. **The former, a decision turning upon an assessment of the substance of a claim, is the more prototypical usage.** *Britt v. Usery*, 2024 Tenn. App. LEXIS 24, *29-32 (Tenn. Ct. App. 2024).

In the present case, the only Coram Nobis finding applicable here is that Jason Autry's video recantation does not, in and of itself, prove actual innocence. This finding may implicate ¶36 and only ¶36; however, every other ground leaves the Coram Nobis Court unscathed by any issue from Rule 28 or the doctrine of *res judicata*.

¶35 and 35(a)

Counsel will perhaps need to submit evidence at the hearing regarding this video recorder. This recorder was not obtained until May of 2024 under a subpoena which the Court has apparently did not sign after an informal request from the Clerk. To be clear, this video could well prove the actual innocence. This evidence is apparently in the State's custody and control, and it is impossible for them to now argue that this issue is somehow previously determined.

Further, the State has failed to adhere to Rule 28§5(G) that must "include the facts relied upon to support the motion to raise as a defense."

II.

All new evidence claims raised by Petitioner Adams' *Second Amended Petition for Post-Conviction Relief* facially cannot satisfy the *Dellinger* standard.

The Defendant submits the following response to each of the paragraphs under attack:

- ¶18(a)(b) it is stipulated that Zach Adams' forthcoming testimony about his innocence is not a stand alone ground for relief; however it is relevant for the denial of effective assistance of Counsel claim.
- ¶35 and 35(a) (and parts of 37) It is submitted that encrypted data that reveals a recording of Zachary Adams with Shayne Austen and John Dylan Adams on April 13th, 2011, at the CB&S Bank shows that on the morning of April 13th, 2011, they were not killing, raping or kidnapping anyone. It is remarkable that the State does not welcome this evidence, but says it is not "scientific."
- ¶36 it is stipulated that Jason Autry's recantation does not comply with the strict ruling and holding in *Dellinger*. As stated, the defendant wishes to preserve this issue for appellate review.

III.

Substantive constitutional claims raised by Petitioner Adams' *Second Amended Petition for Post-Conviction Relief* are barred on waiver grounds.

The State argues the following could have been argued in September of 2017 to the trial Court:

¶38: that somehow the Defendant would have credibly shown to the jury the 2023 recanting of Jason Autry, his 2023 statement that he worked with the State as an agent of the State to secure

a conviction for the State while knowing his important testimony was false; that in 2020 ADA Paul Hagerman would say it was an important piece of securing justice for Holly and "answered many questions that were left open factually in the investigation and many questions Karen and Dana had with what happened."

Further, the State would argue, Mr. Adams should have been able to submit into evidence *certified copies* of Mr. Autry's plea deal and conviction that became final some mere three years in the future.

There was no waiver because the events relied upon in this stand alone claim had not occurred yet, and to argue otherwise is in error.

¶39: it is stipulated that Ms. Thompson could have explored this stand alone claim in the trial court. To the extent it is an independent basis—not the foundational basis for ineffective assistance of counsel on this specific issue—the Court can dismiss it.

¶41 42: (see argument on ¶38). The point is that Mr. Autry recanting and the circumstances now exploring both the State's treatment of Mr. Autry pre and post trial are relevant and could not have ever been presented to the Court outside of time travel.

¶44 and 45 (See argument 38). Here again, the State tried to kill a man (Autry) for a crime it eventually settled on eight years, *time served,* concurrent with other unrelated crimes. That only became apparent after the motion for new trial was denied; a procedural vehicle the State controlled.

Put simply, none of these issues were waived. The State could have avoided this by pleading Autry out and having these issues presented to the Jury. But they cannot eat their cake and have it too and rest behind the waiver doctrine when the events had not yet taken place.

WHEREFORE, premises considered, the Petitioner/Defendant respectfully requests that this Court enter an Order dismissing the State's Motion to Dismiss on the grounds except as stipulated above.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

The undersigned certifies that he has on the 13th day of January 2025, sent a true and correct copy of the following to the person(s) listed below in compliance with the Tennessee Rules of Civil Procedure, Rules 5 and/or 5A, by the following indicated method(s):

ADA Amy Weirich – apweirich@tndagc.org
ADA Christopher Boiano – cvboiano@tndagc.org

☐U.S.P.S., first-class postage pre-paid
☐ Via Fax
☑ Via Email
☐ Hand-delivery by:
☐ Certified Mail, Return Receipt Requested

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