

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PHILIP RAY WORKMAN v. STATE OF TENNESSEE

No. M1999-01334-SC-DPE-PD

Filed June 2, 2003

DISSENTING ORDER

I respectfully dissent from the order denying the Petition for Rehearing and setting the date for the execution of Philip R. Workman. As expressed in my Opinion Respecting the Denial of the Application for Permission to Appeal, Workman has raised valid legal issues concerning the appropriate analysis applicable to evidence supporting coram nobis relief and the admissibility of juror testimony concerning matters unrelated to the original deliberations and verdict.

More important, I would hold that coram nobis relief is mandated by the evidence in this case. Specifically, proof that the “eyewitness” did not see Workman shoot the officer and proof that the wound which caused the officer’s death is inconsistent with the type of wound which would have been caused by a bullet from Workman’s gun dramatically affect the evidence in this case. Consequently, the trial court’s denial of coram nobis relief was an abuse of discretion.

Additionally, I would find that this Court is under a statutory obligation to perform a proportionality review which includes a consideration of the newly-discovered evidence presented in the hearing on the writ for error coram nobis.

For these reasons, I would grant Workman’s application for review under Rule 11 of the Tennessee Rules of Appellate Procedure. Accordingly, I dissent from the order denying the Petition for Rehearing and setting a date for Workman’s execution.

ADOLPHO A. BIRCH, JR.