

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
March 29, 2001

PHILIP R. WORKMAN v. STATE OF TENNESSEE

**Appeal from the Court of Criminal Appeals
Criminal Court for Shelby County
No. B81209, P-3908, and P-3841 John P. Colton, Jr., Judge**

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

Phillip R. Workman filed this action in the Criminal Court for Shelby County, seeking, *inter alia*, a petition for a writ of error coram nobis. He sought this writ based on claims that new evidence, which was unavailable at his trial and which has never been evaluated in a hearing in this State's courts, shows that he is actually innocent of capital murder. The trial court denied this motion on the basis that the statute of limitations barred consideration of the petition. The Court of Criminal Appeals affirmed. Upon consideration of the application for permission to appeal filed by Workman and the answer in opposition filed on behalf of the State of Tennessee, a majority of this Court concludes that the application should be granted. Because we find, under the circumstances of this case, that due process requires that Workman be granted a hearing to evaluate his claims, we reverse the decision of the Court of Criminal Appeals affirming the trial court's dismissal of the petition for writ of error coram nobis. Accordingly, the stay of execution is granted. The case is remanded to Division III of the Criminal Court for Shelby County for a hearing on the petition for writ of error coram nobis.

**Tenn. R. App. P. 11 Appeal by Permission; Judgment of the Court of Criminal Appeals
Reversed; Remanded to the Criminal Court for Shelby County, Division III**

FRANK F. DROWOTA, III, ADOLPHO A. BIRCH, JR., and JANICE M. HOLDER, JJ., delivered the opinion of the court. E. RILEY ANDERSON, C.J., and WILLIAM M. BARKER, J., filed a dissenting opinion.

Robert L. Hutton, Memphis, Tennessee, for the appellant, Phillip R. Workman.

Paul G. Summers, Attorney General & Reporter, Michael E. Moore, Solicitor General, Glenn R. Purden, Senior Counsel, Alice B. Lustre, Assistant Attorney General, and John Campbell, Assistant Attorney General, for the appellee, State of Tennessee.

George E. Barrett, Edmond L. Carey, Jr., Cecil D. Branstetter, and James G. Stranch, III, Nashville, Tennessee, appearing as Amicus Curiae.

MAJORITY OPINION

In this case, the trial court held that Workman's petition for a writ of error coram nobis is barred because he failed to file it timely within the statute of limitations. See Tenn. Code Ann. § 40-26-105. The trial court rejected Workman's claim that the due process considerations discussed in Burford v. State, 845 S.W.2d 204 (Tenn. 1992) require tolling of the statute of limitations. For the reasons that follow, we reverse the decision of the trial court and order a hearing on Workman's petition for writ of error coram nobis.

In our view, the due process considerations discussed in Burford, and more recently in Seals v. State, 23 S.W.3d 272 (Tenn. 2000) and Williams v. State, ___ S.W.3d ___ (Tenn. 2001), released just today, apply with even greater force when the statute of limitations is being applied in a capital case to bar a claim that newly discovered evidence may prove that the defendant is actually innocent of the capital crime of which he was convicted.¹

In Burford, this Court discussed the due process requirements that govern access to post-conviction relief. In that case, four of the five convictions used to enhance a persistent offender sentence had been set aside. Burford filed a post-conviction petition within three years of the date the convictions were set aside, but not within three years of the date of final action on the sentence. This Court concluded that:

while the statute of limitations is not unconstitutional on its face, it is unconstitutional as applied in petitioner's case because it denies him due process under the state and federal constitutions.

Id. at 205. In reaching that conclusion, the Court recognized that,

. . . before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner.

. . . .

. . . it is possible that under the circumstances of a particular case, application of the statute may not afford a reasonable opportunity to have the claimed issue heard and decided.

¹See State v. Severs, 759 S.W.2d 935, 938 (Tenn. Crim. App. 1988) (concluding that a felony murder conviction is inappropriate in a case in which the killing, committed by the intended robbery victim, was not in pursuance of the unlawful act, but rather to thwart it), cited with approval in State v. Buggs, 995 S.W.2d 102, 106 (Tenn. 1999).

Id. at 208. In determining what process is due for post-conviction claims, or in other words, what opportunity must be given, the Court used this balancing analysis:

Identification of the precise dictates of due process requires consideration of both the governmental interests involved and the private interests affected by the official action. . . .

This Court stated that the private interest at stake in Burford was “a prisoner’s opportunity to attack his conviction and incarceration on the grounds that he was deprived of a constitutional right during the conviction process.” Id. at 207. This Court further stated that “[t]he governmental interest represented by the three-year statute of limitations contained in Tenn. Code Ann. § 40-30-102 is the interest in preventing the litigation of stale and groundless claims.” Id. After weighing those interests, the Court in Burford determined that the prisoner’s interest in mounting a constitutional attack upon his conviction and incarceration outweighed the State’s interest in preventing the litigation of stale and groundless claims. Accordingly, the Court in Burford held that the claim, though filed beyond the statute of limitations, was not barred because to apply the statute under those circumstances would violate Burford’s right to constitutional due process.

Recently, in Seals, this Court held that “due process requires tolling of the statute of limitations where a petitioner is denied the reasonable opportunity to assert a claim in a meaningful time and manner due to mental incompetence.” Seals, 23 S.W.3d at 279. We explained that “if the petitioner was mentally incompetent, and therefore legally incapable, he would be denied any opportunity to assert his constitutional rights in a post-conviction petition, unless the period of limitations was suspended during his mental incompetence.” Id. at 278.

Just today, in Williams, this Court further explained the analysis required by Burford when a statute of limitations is employed to bar a claim for post-conviction relief. In Williams, the defendant’s attorney failed to withdraw in accordance with the dictates of Supreme Court Rule 14 following the initial appeal as of right to the Court of Criminal Appeals. As a result, neither the attorney nor the defendant timely filed an application for permission to appeal in this Court. Eventually, an untimely application was filed and dismissed, and at the time of its dismissal, three months remained within which to timely file a petition for post-conviction relief. However, Williams did not file within that time; he actually filed nine months after the expiration of the one-year statutory period. Nevertheless, the majority in Williams remanded the case to the trial court for a hearing to determine whether due process required tolling of the statute of limitations, on the basis that “the appellee might have been denied the opportunity to challenge his conviction in a timely manner through no fault of his own but because of the possible misrepresentation of his counsel.” Williams, ___ S.W.3d at ___.

Clearly, in a variety of contexts, due process may require tolling of an applicable statute of limitations. As in Burford, to determine whether due process requires tolling in this case, we must consider the governmental interests involved and the private interests affected by the official action. In this case, as in Burford, the governmental interest in asserting the statute of limitations is the

prevention of stale and groundless claims. The private interest involved here is the petitioner's opportunity to have a hearing on the grounds of newly discovered evidence which may have resulted in a different verdict if heard by the jury at trial. If the procedural time bar is applied, Workman will be put to death without being given any opportunity to have the merits of his claim evaluated by a court of this State.

Weighing these competing interests in the context of this case, we have no hesitation in concluding that due process precludes application of the statute of limitations to bar consideration of the writ of error coram nobis in this case. Workman's interest in obtaining a hearing to present newly discovered evidence that may establish actual innocence of a capital offense far outweighs any governmental interest in preventing the litigation stale claims. Workman has raised serious questions regarding whether he fired the shot that killed Memphis Police Lieutenant Ronald Oliver. If he did not fire that shot, he is not guilty of the crime for which he is scheduled to be put to death. These claims are based upon evidence obtained from the Shelby County Medical Examiner's Office long after the conclusion of the state post-conviction proceedings. The delay in obtaining this evidence is not attributable to the fault of Workman or his attorneys. In fact, Workman previously had filed a subpoena requesting an x-ray of this type, but it was not provided. No court in this State has actually held a hearing to fully evaluate the strength of these claims. Under such circumstances, Workman's interest in obtaining a hearing on these claims clearly outweighs the governmental interest embodied in the statute of limitations. Accordingly, due process precludes summary dismissal of this claim based upon a statutory time bar.

The fact that this petition for writ of error coram nobis was filed approximately thirteen months after discovery of the evidence at issue does not change the foregoing conclusion. Burford and its progeny clearly mandate that a petitioner be afforded a "reasonable opportunity after the expiration of the limitations period to present his claim in a meaningful time and manner." Williams, ___ S.W.3d at ___. Upon consideration of the circumstances of this case, we conclude that the time within which this petition was filed does not exceed the reasonable opportunity afforded by due process. Indeed, "the magnitude and gravity of the penalty of death persuades us that the important values which justify limits on untimely . . . petitions are outweighed" by Workman's interest having a court evaluate newly discovered evidence that may show actual innocence of the capital offense. In re Clark, 855 P.2d 729, 760 (Cal. 1993).

For the foregoing reasons, we conclude that the decision of the trial court dismissing the writ of error coram nobis should be reversed and the case remanded for a hearing. At the hearing, Workman will have the opportunity to establish that newly discovered evidence may have resulted in a different judgment if the evidence had been admitted at the previous trial. See Tenn. Code Ann. § 40-26-105. If he makes this showing, and if he also establishes that he "was without fault" in failing to present the newly discovered evidence at the appropriate time, he will be entitled to a new trial. Id.; see also State v. Mixon, 983 S.W.2d 661, 673 n.17 (Tenn. 1999) (setting out the showing required if the newly discovered evidence is recanted testimony).

FRANK F. DROWOTA, III, JUSTICE

ADOLPHO A. BIRCH, JR., JUSTICE

JANICE M. HOLDER, JUSTICE