IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
AT MEMPHIS

PHILIP RAY WORKMAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 94-2577-MC
	)	Judge McCalla
RICKY BELL,	)	Death Penalty
	)	
Respondent.	)	

RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION
FOR WRIT OF ERROR CORAM NOBIS AND STAY OF EXECUTION

INTRODUCTION

Petitioner, Philip Ray Workman, moves this Court to grant a writ of error coram nobis. In support, petitioner alleges that ballistics evidence establishes that he did not kill Lieutenant Ronald Oliver, and that a State witness, Harold Davis, testified untruthfully.

Petitioner's motion must be denied. First, this Court is without jurisdiction to entertain the motion because a writ of error coram nobis may not be utilized to attack a state conviction. Although petitioner disguises his motion as a challenge to the denial of habeas corpus, he is, in reality challenging a State criminal conviction. In addition, the identical issues presented were already rejected by the United States Court of Appeals for the Sixth Circuit, and may not be relitigated by way of a writ of error coram nobis. Furthermore, even if petitioner's claims could be examined, and were not

previously resolved against petitioner, he cannot satisfy the strict requirements for obtaining the writ. Finally, because petitioner has no chance of success on the merits of his claim, no grounds exist to warrant a stay of execution.

ARGUMENT

I. THIS COURT IS WITHOUT JURISDICTION TO ENTERTAIN PETITIONER'S CLAIMS BECAUSE A WRIT OF ERROR CORAM NOBIS MAY NOT BE UTILIZED TO ATTACK A STATE COURT CONVICTION

It is well settled that a writ of error coram nobis may not be used to attack a state criminal conviction. *Sinclair v. Louisiana*, 679 F.2d 513 (1982); *Theriault v. Mississippi*, 390 F.2d 657 (5th Cir. 1968); *Thomas v. Cunningham*, 335 F.2d 67 (4th Cir. 1964); *Rivenburgh v. Utah*, 299 F.2d 842 (10th Cir. 1962). Rather, the writ is reserved as an "equitable tool for federal courts to 'fill the interstices of the federal post-conviction remedial framework.'" *United States v. Hansen*, 906 F.Supp. 688, 692 (U.S.D.C., D.C. 1995) *quoting United States v. Ayala*, 894 F.2d 425, 427-28 (D.C. Cir. 1990). Relief may be obtained only by the court in which the sentence was imposed. *Hansen*, 906 F.Supp. at 692.

Petitioner carefully words his petition to appear as though he is challenging only the denial of habeas corpus by the United States District Court. However, petitioner's previous habeas corpus petition challenged the State criminal conviction, and any challenge to the denial of habeas corpus is, in reality, simply a challenge to the State conviction. This, as previously noted, is prohibited.

II THIS COURT MAY NOT REVIEW THE SUBSTANTIVE ISSUES PRESENTED IN THE PETITION FOR A WRIT OF ERROR CORAM NOBIS BECAUSE THE IDENTICAL ISSUES PRESENTED IN THIS ACTION HAVE BEEN ADJUDICATED ADVERSELY TO PETITIONER, THESE DETERMINATIONS HAVE BEEN AFFIRMED ON APPEAL, AND ANY FURTHER CLAIM MUST MEET THE STRICT REQUIREMENTS OF A SECOND OR SUCCESSIVE HABEAS CORPUS PETITION.

Petitioner seeks the writ of error coram nobis based on allegations that ballistics evidence establishes that he did not kill Lieutenant Ronald Oliver, and that a State witness, Harold Davis, testified untruthfully. These identical issues were litigated and rejected, on several occasions, by the United States District Court, the United States Court of Appeals for the Sixth Circuit, and the United States Supreme Court. *Workman v. Bell*, 178 F.3d 759 (6th Cir. 1998), *cert. denied*, 120 S.Ct. 264 (1999), *rehearing denied*, 120 S.Ct. 573 (1999); see also *Workman v. Bell*, 227 F.3d 331 (6th Cir. 2000). Because these issues have been conclusively determined, they may not be relitigated. *United States v. United States Smelting, Refining & Mining Co.*, 339 U.S. 186, 198-99, 70 S.Ct. 537, 544-45 (1950)(law of the case). Similarly, because these identical claims have been considered and rejected by the United States Court of Appeals for the Sixth Circuit, petitioner's asks this Court to sit in appeal of the appellate courts, which is prohibited. F.R.A.P. 3.

Moreover, the availability of a writ of error coram nobis is limited to situations where no other remedy is available. *Johnson*, 237 F.3d at 753. Petitioner may still

pursue habeas corpus remedies[1], and in reality, the current petition for a writ of error coram nobis is simply a second federal habeas corpus petition.[2] *See Sinclair*, 679 F.2d at 515 (treating writ of error coram nobis challenging state conviction as a petition for habeas corpus). Petitioner has offered no authority permitting a writ of error coram nobis in this situation. *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973)(writ of habeas corpus as the exclusive remedy for a state prisoner to challenge the fact or duration of his confinement).

Should this Court treat the current petition as a second habeas corpus petition, petitioner must first obtain permission from the Sixth Circuit to file a second or successive habeas corpus petition. The petition will inevitably fail because in no case can a claim adjudicated in a prior petition be entertained. 28 U.S.C. 2244(b)(1).[3] All of the claims included in this petition have been determined adversely to petitioner.

III. EVEN IF THIS COURT COULD EXAMINE THE SUBSTANCE OF PETITIONER'S CLAIM, IT FAILS TO MEET THE STRICT REQUIREMENTS OF A WRIT OF ERROR CORAM NOBIS.

In order to obtain relief under a writ of error coram nobis a petitioner must

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[1]Rehearing of petitioner's previous habeas corpus petition by the Sixth Circuit is currently pending.

[2]In fact, a petition for a writ of error coram nobis has been determined to be essentially the same as a petition for a writ of habeas corpus under 28 U.S.C. §2255. *United States v. Johnson*, 237 F.3d 751, 755 (6th Cir. 2001). The only substantive difference is that a writ of habeas corpus is available only to prisoners "in custody," while a writ of error coram nobis is available only when the prisoner is no longer in federal custody. *Id.* at 755.

[3]Petitioner's allegations obviously fail to meet the requirements for a "new claim" under 28 U.S.C. §2244 because the identical claims have been adjudicated.

demonstrate that "(1) an error of fact, (2) unknown at the time of trial, (3) of a fundamentally unjust character which probably would have altered the outcome of the challenged proceeding if it had been known." *Flippins v. United States*, 747 F.2d 1089, 1091 (6th Cir. 1984). The Seventh Circuit has stated that a petitioner must show that the claim could not have been raised on direct appeal, that the conviction produces lingering civil disabilities and that the error is the type of defect that would have justified habeas corpus relief. *United States v. Doe*, 867 F.2d 986 (7th Cir. 1989). Petitioner cannot satisfy these criteria.

First, petitioner's allegations are not errors of fact. Rather they are theoretical interpretations of the evidence. Petitioner's experts claim that the bullet could not have been fired by petitioner's gun, and the State's experts have conclusively demonstrated that it was fired by petitioner's gun. In addition, petitioner testified at trial that he fired the bullet that killed Lieutenant Oliver, and no other person, aside from petitioner and Lieutenant Oliver, fired a weapon that night. Similarly, petitioner claims that Harold Davis perjured himself. However, the evidence strongly indicates that Mr. Davis is lying now, but told the truth at the trial. Neither one of these claims satisfies the "error of fact" prong of the coram nobis test. *Moody v. United States*, 874 F.2d 1575, 1576-77 (11th Cir. 1989)("a claim of newly discovered evidence relevant only to the guilt or innocence of the petitioner is not cognizable in a coram nobis proceeding).

In addition, as previously noted, a writ of error coram nobis is essentially identical

to a writ of habeas corpus. As also previously noted, petitioner's identical habeas corpus claims have been rejected. Logic dictates that the current petition must similarly fail.

CONCLUSION

As the Eleventh Circuit held under similar circumstances:

> There simply must be a time when a conviction entered in a state court becomes final. To allow an inmate to continually raise the same issues to overturn a state court conviction is a clear abuse of the judicial system. There comes a time when a court must conclude that a conviction is valid and that the person who is convicted should serve the sentence prescribed by law. This is such a case.

Sinclair, 679 F.2d at 516. For the reasons advanced, the motion for a writ of error coram nobis and the motion for a stay of execution should be denied.

Respectfully submitted,

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