

IN THE CRIMINAL COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT  
AT MEMPHIS, TENNESSEE  
DIVISION III

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PHILLIP R. WORKMAN,  
Petitioner

-vs-

NO. B-81209

STATE OF TENNESSEE,  
Respondent

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MOTION TO DISMISS PETITIONER'S AMENDED  
PETITION FOR WRIT OF ERROR *CORAM NOBIS*

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Comes now the State of Tennessee, and moves this Honorable Court to dismiss the petitioner's Petition for Writ of Error *Coram Nobis*. In support of its motion the State would submit the following:

Writs of Error *Coram Nobis* are recognized as a remedy in criminal cases pursuant to Tennessee Code Annotated, Section 40-26-105. The procedure to follow in filing a Petition for Writ of Error *Coram Nobis* is contained in Tennessee Code Annotated, Section 27-7-101 *et seq.* Section 27-7-103 imposes a one (1) year statute of limitations from the date of judgment in which to file a petition.

The Tennessee Supreme Court had an opportunity to consider the statute of limitations and its application in criminal cases in the case of *Johnson v. Russell*, 218 Tenn. 443, 404 S.W.2d 471 (1966). The court found:

TCA 27-703 provides that the writ of error *coram nobis* is available within one year of the rendition of the judgment by a petition presented to a judge in chambers or open court. The rendition of the judgments complained of in the instant case occurred on October 9, 1963, and of course, the trial judge could take judicial notice of this fact since it was in his court that the present petition was heard. ....Since the rendition of these judgments occurred more than a year before the filling of the petition on November 30, 1965, technically this document was properly treated as a petition for writ of *habeas corpus* rather than a petition for writ of error *coram nobis*.<sup>1</sup>

The court goes on to say:

Thus it appears from what has been heretofore said in the present

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<sup>1</sup>*Johnson v. Russell* ||||| |||||

case this petition as a petition for writ of error *coram nobis* comes to late.<sup>2</sup>

This interpretation of the statute of limitations has been followed up to the present. In the case of *Grizzell v. State*, No. 88-139-III Davidson Co. December 29, 1988, (see Exhibit 1 attached), the Court of Criminal Appeals reviewed a denial of a writ of error *coram nobis* due to the running of the statute of limitations and held that the writ was properly dismissed. The court stated:

In the first place, *coram nobis* relief is time-barred in this case under TCA 27-7-103, which creates a one-year statute of limitations running from the date the judgment in the case becomes final. Grizzell's *coram nobis* petition was filed almost two years to the day after the Tennessee Supreme Court denied his application for permission to appeal from this court's opinion affirming his conviction. The trial judge was therefore correct in holding that as a matter of procedure "relief sought is outside the scope of a Writ of Error *Coram Nobis*."<sup>3</sup>

*Coram Nobis* procedure was examined in even greater detail in the case of *Teague v. State*, 772 S.W.2d 915 (Tenn.Crim.App.1988). The petitioner relies on *Teague* as an authority that supports his position that there is no statute of limitation in *coram nobis* when applied to criminal cases. However a reading of the *Teague* decision shows the court to be holding to an opposite interpretation. The court stated:

When the petitioner seeks relief on the ground of subsequently or newly discovered evidence relating to matters which were litigated at the trial on the merits, the procedure is almost identical in nature to a motion for new trial on the grounds of newly discovered evidence. As a practical matter, the only difference is the time in which the issue must be raised. When the issue is raised in a motion for new trial, the motion must be filed "within thirty (30) days of the date the order of sentence was entered." T.C.A. 40-35-401 (Supp. 1988); Tenn.R.Crim.P. 33(b). On the other hand, this issue may be raised in a writ of error *coram nobis* proceeding "within one (1) year after the judgment becomes final." TCA 27-7-103.<sup>4</sup>

The petitioner is taking the position that this Court should ignore the statutory Statute of Limitations based on the holding of *Burford v. State*, 845 S.W. 2d 204 (Tenn. 1992). It is the petitioner's opinion that *Burford* gives this Court the authority to ignore the Statute of Limitations and entertain his Petition. The State submits that the holding in *Burford* was aimed at the Statute of Limitation in the Post-Conviction Statute §40-30-102. The holding in *Burford*, therefore, is not

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<sup>2</sup>*Johnson v. Russell* \_\_\_\_\_

<sup>3</sup>*Grizzell* \_\_\_\_\_

<sup>4</sup>*Teague v. State* \_\_\_\_\_

controlling in a Petition for Writ of Error *Coram Nobis*. Furthermore, *Burford* protects petitioners who are caught in a “procedural trap” and are time barred under the Statute of Limitations before they can fully present their claims. In this case, the petitioner has been aware of his alleged new evidence for a number of years. In his second Petition for Post-Conviction Relief, P-3908, the petitioner alleged that Lt. Oliver was killed by “friendly fire” from other police officers. This petition was denied on April 7, 1993.<sup>5</sup> In his federal Petition for Writ of *Habeas Corpus*, the petitioner again alleged that he was actually innocent and claimed to have proof that the bullet fired from his gun could not have killed the victim. He relied on an affidavit of Dr. Sperry to support his position. The petitioner’s Petition for Writ of *Habeas Corpus* was denied in the Western District of Tennessee and by the 6<sup>th</sup> Circuit Court of Appeals on October 30, 1998.<sup>6</sup> His allegation that witness Harold Davis perjured himself was known in 1999 when he was interviewed by petitioner’s counsel. The petitioner can not now claim that he just became aware of his proof and ask the Court to toll the Statute of Limitations.

In the present case, the petitioner was convicted by a jury March 31, 1982. His appeal was denied and sentence became “final” on March 19, 1984. The petition for writ of error *coram nobis* should have been filed by March 19, 1985. Clearly after sixteen years has passed the petitioner is now barred from pursuing relief under Tennessee Code Annotated, Section 40-26-105. The Petition should be dismissed without an evidentiary hearing.

Wherefore, based on the statute of limitations, the State moves this Honorable Court to dismiss petitioner's Petition for Writ of Error *Coram Nobis* without the necessity of an evidentiary hearing.

Respectfully submitted,

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<sup>5</sup>*Workman v. State*, 868 S.W.2d 705 (Tenn.Crim.App. 1993, Petition to Appeal to the Tennessee Supreme Court denied April 7, 1993).

<sup>6</sup>*Workman v. Bell*, 178 F. 3<sup>rd</sup> 759 (C.A. 6 (Tenn.)1998).

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JOHN W. CAMPBELL  
ASST. DIST. ATTY. GENERAL

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing response was caused to be delivered to Robert Hutton, Attorney for Petitioner, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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