

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

PHILIP R. WORKMAN v. STATE OF TENNESSEE

**Criminal Court for Shelby County
Nos. P-3908, P-3841 & B-81209**

No. W2001-00774-CCA-R28-PD

ORDER

In this capital case, the petitioner, Philip R. Workman (1) seeks permission to appeal from the trial court's denial of his petition to reopen his first and second post-conviction proceedings, *see* Tenn. Code Ann. § 40-30-217 *et seq.*; (2) appeals the denial of his petition for the writ of error coram nobis; and (3) appeals the denial of his petition for declaratory judgment. Collateral to the appeal of these proceedings, the petitioner moves for a stay of his execution scheduled for 1:00 a.m., March 30, 2001.

A.

With regard to the petitioner's application for permission to reopen previous post-conviction proceedings, he alleges that new scientific evidence and other proof exist which establish that he did not fire the bullet that killed Lieutenant Ronald Oliver.

The Post-Conviction Procedure Act provides that this Court "shall not grant the application [for permission to appeal] unless it appears that the trial court abused its discretion in denying the motion [to reopen]." Tenn. Code Ann. § 40-30-217(c). We have reviewed the record, including the trial court's written findings, and conclude that the trial court did not abuse its discretion in denying the petitioner's motion. Accordingly, permission to appeal the motion to reopen is denied.

B.

With regard to the petition for writ of error coram nobis, the petitioner alleges that he should be granted a new trial based upon grounds of newly discovered evidence. The primary factual bases alleged in support of these grounds are (1) new scientific evidence that the petitioner did not fire the fatal shot that killed Lieutenant Oliver, and (2) recantation testimony of witness Harold Davis.

We conclude the trial court properly dismissed this claim based upon the statute of limitations. *See* Tenn. Code Ann. § 27-7-103; *see also* State v. Mixon, 983 S.W.2d 661, 670-71 (Tenn. 1999). We further reject petitioner's contention that Burford v. State, 845 S.W.2d 204 (Tenn. 1992), tolls the statute of limitations. The trial court properly denied the petition for writ of error coram nobis.

C.

With reference to the petition for declaratory judgment, the petitioner argues on appeal that Article I, §§ 8, 16 and 32 should be construed to "prohibit the execution of a man who presents substantial evidence that he is factually innocent of capital murder." Accordingly, he seeks a stay of execution.

A declaratory judgment action may not be utilized to supersede a valid order of the Tennessee Supreme Court setting an execution date. Robert Glen Coe v. Don Sundquist, No. M2000-00897-SC-R9-CV (Tenn. filed April 19, 2000, at Nashville). By order entered February 28, 2001, the Supreme Court of Tennessee set the petitioner's execution date for March 30, 2001. The proper method of seeking a stay of execution is by petition for post-conviction relief or writ of habeas corpus. *Id.* Thus, petitioner is not entitled to a stay of execution on this ground.

Based upon our review of the record, IT IS ORDERED that:

1. The application for permission to appeal the denial of the motion to reopen the petition for post-conviction relief is DENIED;
2. Dismissal of the petition for writ of error coram nobis and petition for a declaratory judgment is AFFIRMED;
3. The request to stay execution is DENIED; and
4. Costs are taxed to the state since it appears petitioner is indigent.

DAVID G. HAYES, JUDGE

JOE G. RILEY, JUDGE

JOHN EVERETT WILLIAMS, JUDGE