FILED
02/08/2023
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs January 24, 2023, at Knoxville

DEVON BROWN v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
Nos. 11-02623, 11-07432 Lee V. Coffee, Judge

No. W2022-00043-CCA-R3-ECN

The Petitioner, Devon Brown, appeals the Shelby County Criminal Court's summary dismissal of his pro se petition for a writ of error coram nobis, wherein he challenged his 2012 convictions for first degree murder, attempted first degree murder, aggravated assault, facilitation of employing a firearm during the commission of a dangerous felony, and reckless endangerment. Specifically, the Petitioner contended that he had recently discovered the State withheld evidence that several of the victims' vehicles present on the scene were stolen, information that would have materially impacted the credibility of the State's witnesses at trial and might have led to a different outcome. The coram nobis court found that the petition was time-barred, that the Petitioner was not entitled to due process tolling, and that the Petitioner had not presented newly discovered evidence entitling him to a new trial. The Petitioner appeals, and following our review, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

KYLE A. HIXSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Devon Brown, Whiteville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Andrew C. Coulam, Senior Assistant Attorney General; and Amy P. Weirich, District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

The charges in this case arose after David Richardson, Kenneth Brown, and the Petitioner fired more than sixty gunshots at multiple individuals gathered at a party on July 3, 2010. As a result of this shooting incident, Kimberly Jamerson was killed and Lamarcus

Moore was injured. Thereafter, in 2012, a Shelby County jury convicted the Petitioner of one count of first degree murder, twelve counts of attempted first degree murder, twelve counts of aggravated assault, one count of the lesser-included offense of facilitation of employing a firearm during the commission of a dangerous felony, and one count of reckless endangerment. The trial court imposed an effective sentence of life plus 244 years' incarceration. On appeal, this court affirmed the Petitioner's convictions and sentences, and our supreme court denied the Petitioner's application for permission to appeal. *State v. Devon Brown*, No. W2013-00182-CCA-R3-CD, 2014 WL 4384954, at *1 (Tenn. Crim. App. Sept. 5, 2014), *perm. app. denied* (Tenn. Jan. 15, 2015).

At trial, the State presented the following evidence. On July 3, 2010, Robrecus Braxton lived at 2706 Northmeade Avenue in Memphis with his mother, Sonja Watkins; his step-father, Felix Williams; his brother, Christopher Braxton; and his two sisters, Amber and Dakarrionah Laury. *Brown*, 2014 WL 4384954, at *4. Mr. Braxton was home that day preparing for a Fourth of July celebration, along with his uncles, Nakia Greer and DeAngelo Smith; and his cousins, Kenneth Baker, Chymia Baker, Jalon Baker, and Lashanna Jones. *Id.* Several other visitors were also present throughout the day, including Mr. Moore and Ms. Jamerson. *Id.* at *4, *8.

Some time that evening, Mr. Williams' sister-in-law, Dena Watkins, engaged in an exchange of marijuana with codefendant Brown at a nearby residence. *Brown*, 2014 WL 4384954, at *5. After the sale was over, both Ms. Watkins and codefendant Brown left the area. *Id.* About fifteen to twenty minutes later, a green Chevrolet Lumina containing codefendants Brown and Richardson, pulled up at the Northmeade residence. *Id.* at *4-5. The two men got out of the car, approached Mr. Williams and Mr. Greer, and claimed that someone in the house had taken some marijuana from them. *Id.* at *4. Both Mr. Williams and Mr. Greer indicated that the person in question, Ms. Watkins, was not present and that they should return later to sort out the problem. *Id.* at *4-5.

The two men left but came back just a few minutes later with the Petitioner, who was sitting in the back of the Lumina. *Brown*, 2014 WL 4384954, at *4. After the three men stepped out of the vehicle, Mr. Williams spoke with them and gave the driver of the car five dollars to "keep the situation down." *Id.* Later, as the Lumina suddenly pulled away, it nearly clipped Mr. Braxton's knees, and Mr. Braxton threw a beer can at the car in retaliation. *Id.* The car stopped, and the three men, including the Petitioner, got out of the Lumina. *Id.* A fistfight ensued, which lasted about ten minutes. *Id.* Eventually, the fight ended after the car's window was broken. *Id.* at *5. Before the three men left the Northmeade residence, they said, "All right. That's what's up. That's what's up," which Mr. Braxton took as a threat. *Id.* Mr. Williams heard the three men say, "We'll be back." *Id.* at *5.

Several hours later, the Petitioner and his codefendants returned and opened fire on the house. *Brown*, 2014 WL 4384954, at *4. At that time, Mr. Williams had just accompanied Ms. Jamerson, who was planning on leaving, to the end of the driveway. *Id.* at *6. As Mr. Williams was returning to the house, he saw a bottle rocket strike his wife's Dodge Durango before a second bottle rocket struck his arm. *Id.* About a minute later, Mr. Williams heard gunshots. *Id.* He estimated that sixty to seventy shots were fired at the house before the shots ended. *Id.*

Brothers Mark and Steve Chambers were present when the gunfire broke out. Mark[1] crawled inside the Northmeade residence and retrieved his two guns, a "nine Ruger and a [nine]-millimeter Smith and Wesson." *Brown*, 2014 WL 4384954, at *8. After retrieving his guns, Mark walked outside and began firing back in the direction of the shooters. *Id.* Mark found Mr. Moore, who had been shot in the leg, and he and Steve, along with Cleotha Norwood, carried Mr. Moore to their car while shots were still being fired. *Id.* at *8-9. Steve testified that Mark dropped one of his guns as they were taking Mr. Moore to the car, so Steve picked it up and fired two times to ensure that they made it to the car. *Id.* at *8. Mark said that he placed his two guns in the car and that they drove Mr. Moore to the hospital. *Id.* Mark estimated that he fired seven to ten shots from each of his two guns during the shooting. *Id.* Steve did not recall later telling investigators that he fired five or six shots from Mark's gun. *Id.*

The firefight lasted about ten minutes. *Brown*, 2014 WL 4384954, at *4. After the shooting ended, Ms. Jamerson was lying on the ground in the front yard. *Id.* at *6. She died from a gunshot wound to the head. *Id*.

The Petitioner was subsequently interviewed by police. *Brown*, 2014 WL 4384954, at *7. After being advised of his *Miranda* rights, the Petitioner admitted that he was armed with a black shotgun at the time of the shooting and that he fired three shots, though he was unsure if he struck anyone when he fired the shotgun. *Id.* According to the Petitioner, codefendant Brown was armed with a revolver, and codefendant Richardson was shooting an assault rifle. *Id.* The Petitioner claimed that they did not fire at the house until they were fired upon. *Id.* He estimated that between the three of the codefendants, they fired between seventeen and twenty-three shots from inside the Lumina at the house and the people inside. *Id.* The Petitioner told the officer that the weapons they used were located at his residence, but the officers were never able to locate the weapons. *Id.* at *8.

An investigator found numerous shell casings on the sidewalk in front of 3840 Helmwood Street, which was located three houses away from the Northmeade residence.

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[1] Because the brothers share a surname, we will refer to them by their first names to avoid confusion. We intend no disrespect in so doing.

Brown, 2014 WL 4384954, at *6. The investigator testified that the following shell casings were recovered from the Helmwood location: "thirty-two .30 [caliber] spent casings, eight .45-caliber spent casings, twenty-five LC05 spent casings, and three 20-gauge shell casings." *Id.* Based upon forensic firearm testing, it was determined "that four weapons were used in the assault" and that Ms. Jamerson was killed by a bullet from a .30 caliber rifle. *Id.* at *10. In addition, at the Northmeade residence, the investigator recovered "six 7.62 x 39 spent casings, two bullet fragments and nine spent [nine]-millimeter Ruger casings." *Id.* at *6.

A crime scene officer later searched the green Chevrolet Lumina but did not find any shell casings, bullets, or weapons inside. *Brown*, 2014 WL 4384954, at *9. No bullet holes were observed on the outside or the inside of the Lumina. *Id.* Another investigator searched a Buick Roadmaster belonging to Mark and Steve Chambers, and two nine-millimeter pistols were located inside the car. *Id*. at *7.

The Petitioner filed a timely pro se petition for post-conviction relief on November 2, 2015, raising eight claims of ineffective assistance of counsel, including an allegation that trial counsel "failed to adequately question the State's witnesses during cross-examination." *See Devon Brown v. State*, No. W2017-02187-CCA-R3-PC, 2018 WL 5044626, at *1, *4 (Tenn. Crim. App. Oct. 17, 2018), *perm. app. denied* (Tenn. Feb. 25, 2019). Ultimately, the post-conviction court denied the petition after a hearing, and in doing so, the court notably found that the Petitioner's trial counsel "vigorously cross-examine[d] prosecution witnesses" and that the Petitioner was not a credible witness. *Id.* at *4. This court again affirmed. *Id.* at *6.

On April 18, 2019, the Petitioner filed a pro se petition for a writ of error coram nobis challenging these convictions, the subject of the instant appeal. In his petition, the Petitioner alleged that he had recently discovered the State withheld evidence that several of the victims' vehicles present on the scene were stolen. The Petitioner asserted that this information went to the credibility of the State's witnesses and had impeachment value that might have changed the outcome of trial. The Petitioner posited that "the veracity of the State[']s witnesses [was] everything" because there was "a real question" as to whether the Petitioner and his codefendants shot Ms. Jamerson or whether the individuals at whom they were shooting shot Ms. Jamerson during the return fire. According to the Petitioner, had the jury been aware of this information, they might not have believed the testimony of the State's witnesses that they only used nine-millimeter handguns during the shooting. He further averred that based upon this newly discovered evidence, which was "within the [State's] file" and "did not become available until years after the fact," due process considerations required tolling of the statute of limitations as these allegations could not have been presented previously.

Specifically, the Petitioner alleged that the following two vehicles were stolen:

> The green Cadillac with license plate DEV-153 from Mississippi reflects that tag goes back to a 2013 Nissan NV Cargo Conversion Van with VIN: IN6BFOLY1DN113194; 2500 HD S V6 High Roof Conversion Van, that is listed in the Stolen Database with 4 checks.
>
> . . . A Red Dodge Durango with the license plate 274-VTY, officers listed this as a Tennessee plate, however, there was no match found for this plate in Tennessee, yet when checked under Arkansas database, the plate comes back to a 2012 Hyundai Elantra GIS Air Sedan 4-Door VIN: KMHDH4AEXXCU447200, also listed under a stolen database.

According to the Petitioner, the green Cadillac was "linked" to Mr. Williams, who testified at the Petitioner's trial. In support of this claim relative to the green Cadillac, the Petitioner attached a printout of a webpage, "FAXVIN," which listed the vehicle-identification number referenced above as belonging to a 2013 Nissan NV Cargo Van and stated that there were four "checks" in "stolen databases."

On December 13, 2021, the coram nobis court entered an order summarily dismissing the petition. The court first cited the one-year coram nobis statute of limitations, as well as principles of due process tolling, and then concluded that the Petitioner had the victims' vehicle and FAXVIN website information available to him over the last decade and could have presented this evidence on direct appeal or post-conviction review. In addition, the court did not find the Petitioner's allegations credible and determined that the evidence was not newly discovered. The court further determined that the Petitioner had failed to state a cognizable claim for relief and that he had not presented any evidence that might have resulted in a different judgment had it been presented at trial. This timely appeal followed.

II. ANALYSIS

On appeal, the Petitioner argues that the coram nobis court erred by summarily dismissing his petition because the State withheld material impeachment evidence, amounting to newly discovered evidence, that might have affected the outcome of his trial. According to the Petitioner, the State withheld impeachment evidence "of stolen vehicles being in the possession of various [S]tate['s] witnesses prevent[ing] the defense from being able to bring to the jurors['] attention the inherent bias of [S]tate['s] witnesses who were either offered deals to testify or were facing the specter of prosecution if they did [not] testify." The Petitioner concludes that had this information been available to him, it would have put the case in such a different light that it undermines confidence in the verdict.

Though the Petitioner mentioned the one-year statute of limitations and equitable tolling in his coram nobis petition, he does not mention either in his appellate brief.

The State asks us to affirm the coram nobis court's dismissal because the petition was filed after the one-year statute of limitations had expired and because the Petitioner's allegations are without merit. The State argues that the Petitioner failed to show his entitlement to tolling of the limitations period, noting that the FAXVIN website information was not in the sole possession, custody, or control of the State and, therefore, could not be suppressed by the State and was available to the Petitioner previously. The State further observes that the Petitioner did not attach any documents purportedly belonging to the State regarding any vehicles parked at the victims' house, such as vehicle-identification numbers, the ownership of the vehicles, or any indication that they were illegally obtained. The State cites that newly discovered evidence which serves no other purpose than to contradict or impeach does not warrant the issuance of a writ of error coram nobis. Finally, the State contends that there is no reasonable probability that impeaching the credibility of the State's witnesses with this information might have changed the outcome of the trial.

A writ of error coram nobis lies "for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial." Tenn. Code Ann. § 40-26-105(b). The writ of error coram nobis is "an *extraordinary* procedural remedy," designed to fill "only a slight gap into which few cases fall." *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999) (emphasis in original) (citation omitted). The petition for writ of error coram nobis must be in writing and must describe with particularity the nature and substance of the newly discovered evidence and demonstrate that the evidence qualifies as newly discovered evidence. *Nunley v. State*, 552 S.W.3d 800, 816 (Tenn. 2018) (quoting *Payne v. State*, 493 S.W.3d 478, 484-85 (Tenn. 2016)). To be considered newly discovered evidence, "the proffered evidence must be (a) evidence of facts existing, but not yet ascertained, at the time of the original trial, (b) admissible, and (c) credible." *Id.* (quoting *Payne*, 493 S.W.3d at 484-85). "The statute presupposes that the newly discovered evidence would be admissible at trial." *Id.* (quoting *Wilson v. State*, 367 S.W.3d 229, 235 (Tenn. 2012)).

Before granting coram nobis relief, the trial court must be "reasonably well satisfied" with the veracity of the proffered evidence. *State v. Vasques*, 221 S.W.3d 514, 527 (Tenn. 2007). If the petitioner is "without fault" in failing to present the evidence at the proper time, in the sense that the exercise of reasonable diligence would not have led to a timely discovery of the new information, "the trial judge must then consider both the evidence at trial and that offered at the coram nobis proceeding in order to determine whether the new evidence may have led to a different result." *Id.* (emphasis omitted). In

determining whether the new information might have led to a different result, the question before the court is "whether a reasonable basis exists for concluding that had the evidence been presented at trial, the result of the proceeding might have been different." *Id.* (quotation omitted).

Generally, a decision whether to grant a writ of error coram nobis rests within the sound discretion of the trial court. *Payne*, 493 S.W.3d at 484 (citation omitted). If a petition for coram nobis relief is granted, the judgment of conviction will be set aside and a new trial will be granted. *Id.* at 485 (quotation omitted). "[C]oram nobis petitions with inadequate allegations are susceptible to summary dismissal on the face of the petition, without discovery or an evidentiary hearing." *Nunley*, 552 S.W.3d at 831.

In addition to the requirements regarding specificity, a petition for writ of error coram nobis must be filed within one year of the date the judgment of the trial court becomes final. Tenn. Code Ann. §§ 27-7-103, 40-26-105. The statute of limitations is calculated from the date the judgment of the trial court becomes final, either thirty days after its entry in the trial court if no post-trial motions are filed or upon entry of an order disposing of a timely, post-trial motion. *Payne*, 493 S.W.3d at 484 (citation omitted); *Mixon*, 983 S.W.2d at 670 (citations omitted). A petition for a writ of error coram nobis may be summarily dismissed if it fails to show on its face that it has been timely filed because the timely filing requirement in Code section 27-7-103 is an essential element of a coram nobis claim. *Nunley*, 552 S.W.3d at 828 (citation omitted). "[T]he statute of limitations set forth in Section 27-7-103 is not an affirmative defense that must be specifically raised by the State in error coram nobis cases; instead, the coram nobis petition must show on its face that it is timely filed." *Id.*

However, due process tolling is permitted within the context of coram nobis claims under limited circumstances. *Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001). Due process requires the tolling of a statute of limitations period when a petitioner would otherwise be denied "an opportunity for the presentation of claims at a meaningful time and in a meaningful manner." *Id.* at 102 (quoting *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992)). To accommodate due process concerns, the one-year statute of limitations may be tolled if a petition for a writ of error coram nobis seeks relief based upon new evidence of actual innocence discovered after expiration of the limitations period. *Nunley*, 552 S.W.3d at 828-29 (citing *Wilson*, 367 S.W.3d at 234).

In accordance with the extraordinary nature of the writ, petitioners must plead specific facts demonstrating why they are entitled to equitable tolling of the statute of limitations:

> [A] prisoner must demonstrate with particularity in the petition: (1) that the ground or grounds upon which the prisoner is seeking relief are "later arising" grounds, that is grounds that arose after the point in time when the applicable statute of limitations normally would have started to run; [and] (2) that, based on the facts of the case, the strict application of the statute of limitations would effectively deny the prisoner a reasonable opportunity to present his or her claims . . . . A prisoner is not entitled to equitable tolling to pursue a patently non-meritorious ground for relief.

Nunley, 552 S.W.3d at 829 (quotation omitted). In addition, "[b]ased on the facts of the particular case, the coram nobis petition must be filed within a time period that 'does not exceed the reasonable opportunity afforded by due process.'" *Id.* at 830 (quoting *Sample v. State*, 82 S.W.3d 267, 276 (Tenn. 2002); *Workman*, 41 S.W.3d at 103). This court reviews whether a claim is time-barred, as well as whether due process principles require tolling the statute of limitations, de novo. *See Nunley*, 552 S.W.3d at 830.

Here, the Petitioner was convicted by a jury in 2012. This court affirmed his judgments on September 5, 2014, and our supreme court denied permission to appeal on January 15, 2015. The post-conviction petition filing had no effect on the coram nobis statute of limitations in this case. The Petitioner did not file his coram nobis petition until 2021, well past the one-year filing deadline. The Petitioner conceded as much in his coram nobis petition. In his petition, the Petitioner indicated that he was aware of the statute of limitations and anticipated the issue being raised given his argument that the limitations period should be tolled based upon this newly discovered evidence, which was "within the [State's] file" and "did not become available until years after the fact[.]"

Initially, we observe that to the extent that the Petitioner's allegations in his petition on appeal implicate *Brady v. Maryland*, 373 U.S. 83, 87 (1963), our supreme court in *Nunley* clarified *Brady*'s application in the coram nobis context. The *Nunley* court held, in part, "that an error coram nobis proceeding is not the appropriate procedural vehicle for obtaining relief on the ground that the defendant suffered a constitutional due process violation under *Brady*." 552 S.W.3d at 819. The *Nunley* court further explained "[i]f the newly discovered evidence that is the subject of an error coram nobis petition happens to also be material information favorable to the defense that the State improperly suppressed at trial (sometimes referred to as "*Brady*" evidence), the claim must be evaluated in accordance with the requirements of the coram nobis statutes." *Id.*

The coram nobis court found that the Petitioner had the victims' vehicle and FAXVIN website information available to him over the last decade and could have presented the evidence on direct appeal or post-conviction review. We observe that the Petitioner did not state with any specificity why this information from a public website was

not available to him earlier and amounted to newly discovered evidence. As noted by the State, the FAXVIN website information was not in the sole possession, custody, or control of the State and could not be suppressed by the State. In addition, the Petitioner did not attach any documents regarding the vehicles located at the 2706 Northmeade residence or connect those vehicles in any way to the FAXVIN website information provided.

The coram nobis court also determined that the Petitioner had failed to state a cognizable claim for relief and that he had not presented any evidence that might have resulted in a different judgment had it been presented at trial. We note that in this regard, the coram nobis court did not find the Petitioner's allegations to be credible, and we agree with the court that the Petitioner's claim of newly discovered evidence is unconvincing. The Petitioner has failed to present any new evidence, unknown facts, or new matters that could not have been presented previously, and he has not established that he was without fault in failing to present the evidence at the proper time.

Moreover, as has often been stated, "[n]ewly discovered evidence that is merely cumulative or serves no other purpose than to contradict or impeach does not warrant coram nobis relief." *State v. Hall*, 461 S.W.3d 469, 495 (Tenn. 2015) (quotation omitted). The Petitioner confessed to shooting at the house when multiple people were present. Ms. Jamerson was shot by a .30 caliber bullet to the head, and law enforcement found .30 caliber shell casings on the sidewalk three houses away at the location where the Petitioner and his codefendants were shooting. There is no reasonable probability that impeaching the State's witnesses with information that their vehicles were stolen might have led to a different result. Accordingly, the Petitioner's claim is patently non-meritorious, not entitled to due process tolling, and subject to dismissal. *See Nunley*, 552 S.W.3d at 829.

III. CONCLUSION

In consideration of the foregoing and the record as a whole, the judgment of the coram nobis court is affirmed.

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KYLE A. HIXSON, JUDGE