IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 15, 2023

GLENARD CORTEZ THORNE v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2007-A-591 Steve R. Dozier, Judge

No. M2023-00294-CCA-R3-ECN

The petitioner, Glenard Cortez Thorne, appeals the denial of his petition for writ of error coram nobis by the Davidson County Criminal Court, arguing the trial court erred in dismissing the petition because newly discovered evidence exists in his case. After our review, we conclude the petition is untimely and does not present a cognizable claim for coram nobis relief. Accordingly, we affirm the denial of the petition.

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

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT L. HOLLOWAY, JR., JJ., joined.

Glenard Cortez Thorne, Henning, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Glenn R. Funk, District Attorney General; and J. Wesley King, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

A Davidson County jury convicted the petitioner of two counts of aggravated robbery, one count of aggravated burglary, two counts of especially aggravated kidnapping, and two counts of facilitation to commit rape for which he received an effective sentence of fifty-two years. *State v. Sandifer, et. al,* No. M2008-02849-CCA-R3-CD, 2010 WL 5343202, at *1 (Tenn. Crim. App. Dec. 21, 2010), *perm. app. denied* (Tenn.

May 26, 2011). On appeal, this Court affirmed the petitioner's convictions and sentences, and our supreme court declined review. *Id.* at *1.

In February 2012, the petitioner filed a timely petition for post-conviction relief alleging the ineffective assistance of counsel. *Thorne v. State*, No. M2012-02528-CCA-R3-PC, 2013 WL 4647623, at *1 (Tenn. Crim. App. Aug. 26, 2013), *perm. app. denied* (Tenn. Dec. 11, 2013). After conducting a hearing, the post-conviction court dismissed the petition upon finding "the petitioner has failed to prove any of his factual allegations by clear and convincing evidence and he has not demonstrated prejudice." *Id.* at *7. On appeal, this Court affirmed the judgment of the post-conviction court, and our supreme court declined review. *Id.* at *1.

On November 28, 2022, the petitioner filed a petition for writ of error coram nobis which contained numerous allegations relating to his sentence, ineffective assistance of counsel, and prosecutorial misconduct. In its order dismissing the petition, the trial court found that "the writ fails procedurally" because the district attorney general was not served with a copy of the petition. Concerning the petitioner's claim of prosecutorial misconduct in which the petitioner relied on an article addressing the termination of the prosecutor in his case, the trial court found that "[s]uch documentation does not qualify as 'newly discovered evidence' which existed at the time of trial and is likely to have resulted in a different judgment." Finally, the trial court found that it "is not apparent on [the face of the petition] that the applicable and newly discovered evidence should toll the one (1) year timely filing statute."

This timely appeal followed.

Analysis

On appeal, the petitioner, focusing on his claim of prosecutorial misconduct, argues the trial court erred in dismissing his petition and insists he is entitled to coram nobis relief. The State, however, contends the trial court properly dismissed the petition as untimely and argues the petitioner's claim "does not constitute newly discovered evidence which existed at the time of—and was admissible in—his trial." Upon our review of the parties' briefs and the applicable law, we affirm the judgment of the trial court.

The writ of error coram nobis in criminal cases is a statutory remedy limited to "errors *dehors* the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding." Tenn. Code Ann. § 40-26-105(b). To obtain relief, a petitioner must show he "was without fault in failing to present certain evidence at the proper time." *Id.* If successful, "a writ of error coram nobis will lie 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." *Id.* "Our supreme court has stated the standard of review as 'whether a reasonable basis exists for concluding that had the evidence been presented at trial, the result of the proceedings might have been different.'" *Sanders v. State*, No. M2016-00756-CCA-R3-ECN, 2017 WL 633784, at *2 (Tenn. Crim. App. Feb. 16, 2017) (quoting *State v. Vasques*, 221 S.W.3d 514, 525-28 (Tenn. 2007)).

Accordingly, a writ of error coram nobis is an extraordinary remedy available only under very narrow and limited circumstances. *State v. Mixon*, 983 S.W.2d 661, 666 (Tenn. 1999). To obtain coram nobis relief, a petitioner must show "'(1) that he or she was reasonably diligent in seeking the evidence; (2) that the evidence is material; and (3) that the evidence is likely to change the result of the trial.'" *Hayes v. State*, No. W2018-01555-CCA-R3-ECN, 2019 WL 3249898, at *3 (Tenn. Crim. App. July 19, 2019), *perm. app. denied* (Dec. 10, 2019) (quoting *State v. Hall*, 461 S.W.3d 469, 495 (Tenn. 2015)). "'Newly discovered evidence that is merely cumulative or serves no other purpose than to contradict or impeach does not warrant coram nobis relief.'" *Id.* (quoting *Hall*, 461 S.W.3d at 495). The decision to grant or deny a petition for writ of error coram nobis rests within the sound discretion of the trial court. *Id.* (citing *Hall*, 461 S.W.3d at 496).

Before the merits of a coram nobis claim can be reviewed, the petitioner must show that his claims are timely. *Nunley v. State*, 552 S.W.3d 800, 828 (Tenn. 2018) (citing *Harris II*, 301 S.W.3d at 153 (Koch, J., concurring) (internal citations omitted)). A petitioner has one year from the date a judgment becomes final to seek relief under a writ of error coram nobis. Tenn. Code Ann. § 27-7-103. Our supreme court has emphasized that "in Tennessee, the statute of limitations in *coram nobis* cases has historically been 'strictly observed.'" *Nunley*, 552 S.W.3d 800, 828 (Tenn. 2018) (quoting Higgins & Crownover, § 1767, at 701).

Our supreme court has warned that "a petition for a writ of error *coram nobis* 'is subject to being summarily dismissed if it does not show on its face that it has been timely filed' and that 'compliance with the timely filing requirement in Tenn. Code Ann. § 27-7-103 is an essential element of a coram nobis claim.'" *Id.* (citations omitted). As such, "the 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.* "This holding is consistent with Tennessee's 'longstanding rule that persons seeking relief under the writ must exercise due diligence in presenting the claim.'" *Id.* (quoting *Mixon*, 983 S.W.2d at 670).

However, due process tolling is permitted within the context of coram nobis claims under limited circumstances. "If the *coram nobis* petition does not show on its face that it

is filed within the one-year statute of limitations, the petition must set forth with particularity facts demonstrating that the prisoner is entitled to equitable tolling of the statute of limitations." *Nunley*, 552 S.W.3d at 829. Thus, in order "[t]o 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." *Id.* at 828-29 (citations omitted). "The doctrine of equitable tolling requires the court to consider 'the governmental interests involved and the private interests affected by the official action.'" *Id.* at 830 (quoting *Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001)). The two interests "are weighed to determine whether due process requires tolling of the statutory limitations period, in light of the fact that 'due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner.'" *Id.* (quoting *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992)). "Based 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.* (citing *Sample v. State*, 82 S.W.3d 267, 276 (Tenn. 2002); *Workman*, 41 S.W.3d at 103; *see also Workman*, 41 S.W.3d at 105-06 (Anderson, Riley, J., dissenting) ("noting that, even if statute of limitations was tolled during time in which petitioner was unaware of the new evidence, 'the record in this case shows that more than one year, the time provided by the statute of limitations, has passed since he first became aware of the evidence,' so 'due process is not implicated'")). "Whether a petitioner is entitled to due process tolling of the statute of limitations is a mixed question of law and fact, which we review de novo with no presumption of correctness." *Hayes*, 2019 WL 3249898, at *3 (citing *Nunley*, 552 S.W.3d at 830).

Here, it is undisputed that the petitioner's coram nobis petition was filed at least ten years outside the applicable one-year statute of limitations period as the petitioner's judgments were entered October 14, 2008, and his petition was not filed until February 8, 2023, after he discovered the alleged "newly discovered evidence" in August 2022. As such, this Court must determine if the petitioner is entitled to equitable tolling before we can reach the merits of the petitioner's claims. Guided by *Nunley*, we must first look to the petition to determine if it includes facts sufficient to warrant review under the principles of equitable tolling. 552 S.W.3d at 829. In his petition, the petitioner failed to argue or even mention the statute of limitations or that the statute should be tolled. Now, on appeal, the petitioner makes an overly broad claim that "due process requires" the statute to be tolled. However, at no point in his brief, does the petitioner provide any particularized facts or specific argument in support of his overly broad claim. Accordingly, the trial court did not abuse its discretion in summarily dismissing the instant petition as barred by the one-year statute of limitations.

Despite the untimeliness of the instant petition, the record supports the trial court's finding that the petitioner's claim did not constitute "newly discovered evidence." In

support of his prosecutorial misconduct claim, the petitioner attached to his petition an article concerning a prosecutor who was fired for, as described by the trial court, "evidence of prosecutorial prejudice, racism, and bias against the [p]etitioner." However, as noted by both the trial court and the State, the article in question concerned an event that took place nearly a decade after the petitioner's trial and was in no way related to the petitioner's case. Contrary to the petitioner's claim, the article does not constitute evidence of facts existing, yet not ascertained, at the time of the petitioner's trial and, therefore, does not meet the definition of newly discovered evidence. Additionally, even if the evidence existed at the time of the petitioner's trial, it would not have been relevant to the petitioner's case and would not have been admissible in the petitioner's trial. Accordingly, the petitioner is not entitled to relief.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

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J. ROSS DYER, JUDGE