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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
June 27, 2023 Session

SHAUN ALEXANDER HODGE v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 121602 G. Scott Green, Judge

No. E2022-00911-CCA-R3-ECN

Shaun Alexander Hodge, Petitioner, filed a petition for writ of error coram nobis (the Petition) seeking relief from his 2002 conviction for first degree premeditated murder and his life sentence. The coram nobis court summarily dismissed the Petition after finding that the Petition was not timely filed; that the Petition failed to set forth with particularity facts demonstrating that Petitioner was entitled to equitable tolling; that the evidence of a witness's prior criminal conviction was not newly discovered; and that there was no reasonable basis to conclude that, if the claimed newly discovered evidence had been presented to the jury, the result might have been different. After a thorough review of the record and applicable law, we affirm.

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

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

Gena Lewis, Knoxville, Tennessee, for the appellant, Shaun Alexander Hodge.

Jonathan Skrmetti, Attorney General and Reporter; Edwin Alan Groves, Jr., Assistant Attorney General; Charme Allen, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

A Knox County jury convicted Petitioner of first degree premeditated murder in the April 26, 1998, shooting death of Benny Boling, and the trial court sentenced Petitioner to

life. *State v. Hodge*, No. E2002-01794-CCA-R3-CD, 2003 WL 22888892, at *1 (Tenn. Crim. App. Dec. 8, 2003), *perm. app. denied* (Tenn. May 10, 2004). The judgment of conviction was entered on March 2, 2001, and the motion for new trial was denied on July 25, 2002.[1] This court affirmed the judgment of conviction on direct appeal. *Id*.

Petitioner next filed a petition for post-conviction relief claiming trial counsel was ineffective for interviewing Tim Bolden without a witness or without making an audio recording of the interview and by failing to inquire into Lorraine Young's mental health history. *Hodge v. State*, No. E2009-02508-CCA-R3-PC, 2011 WL 3793503, at *1, 4-5 (Tenn. Crim. App. Aug. 26, 2011), *perm. app. denied* (Tenn. Feb. 15, 2012). Mr. Bolden and Ms. Young both testified at trial that they saw Petitioner shoot the victim. *See Hodge*, 2003 WL 22888892, at *4-5. Petitioner also claimed that the State withheld exculpatory evidence when it failed to produce the mental health records pertaining to Ms. Young. *Hodge*, 2011 WL 3793503, at *6-7. The post-conviction court denied relief following a hearing, and this court affirmed the post-conviction court's judgment. Id. at *1.

In its opinion, this court summarized the proof at the trial as follows:

> [T]he forensic evidence established that the victim was slain at a local housing project on April 26, 1998. The victim died after being shot five times by a nine-millimeter semiautomatic handgun. While the victim was initially shot from the rear as he occupied the cab of his pickup truck, he managed to drive himself a short distance away before running off of the road and ultimately fled on foot approximately seventy-five feet up a hill before collapsing near a day care center. There, the victim's body was discovered, with the victim still clutching a $100 bill in his hand. Police recovered a total of seventeen spent shell cartridges from the scene. During the autopsy, the victim's blood tested positive for cocaine.
>
> The murder weapon was never recovered, and none of the forensic evidence definitively connected [P]etitioner to the victim's shooting. The prosecution's case hinged on the testimony of four eyewitnesses. Debra Turner, who lived in the community, testified that on the day of the shooting, she was at home when she heard someone outside threatening to kill someone if he did not buy drugs. She looked out her back door and saw [P]etitioner talking to the victim, who was in his truck. After she heard the victim refuse to buy the drugs, she heard a gunshot and saw the victim's truck moving away. [P]etitioner followed the truck, firing into it. When the truck struck a

[1] We take judicial notice of court records in the direct appeal of this case that contain these dates. *State v. Lawson*, 291 S.W.3d 864, 869 (Tenn. 2009).

tree, the victim exited the truck and ran. [P]etitioner followed him, still firing at the victim. When the victim collapsed, [P]etitioner stood over him and shot him. Patricia Hamilton, who was visiting Debra Turner at the time of the shooting, testified to essentially the same version of events.

A third witness, Lorraine Young, who lived nearby, testified that she knew [P]etitioner prior to the shooting. The day prior to the shooting, she saw the victim drive into the housing projects and purchase drugs. On the day of the shooting, Ms. Young was lying in bed when she heard a commotion and looked out her bedroom window. She saw [P]etitioner and three men standing near the victim's truck having an argument about drugs and money. She heard the victim refuse to buy drugs. She left the window for a moment and then returned to see the victim crash his truck and flee away on foot while [P]etitioner shot him.

The final eyewitness, Tim Bolden, testified that he had previously sold the victim crack cocaine and did so on several occasions the day of the shooting. At the time of the shooting, Mr. Bolden was gambling with some other men when he saw the victim drive up, looking to purchase additional drugs. However, Mr. Bolden testified that he continued to gamble and that [P]etitioner approached the victim's truck. Mr. Bolden testified that he heard loud voices, saw the victim leaving in his truck, and saw [P]etitioner firing at the victim. After the victim's truck struck a curb, the victim left the truck and fled on foot. [P]etitioner continued to shoot the victim and, afterward, came back down the hill while the men who were gambling fled the scene.

The defense's theory of the case was that the prosecution's four eyewitness identifications were erroneous and that one of those eyewitnesses, Mr. []Bolden, may have been the actual killer. The defense presented the testimony of six eyewitnesses in support of this theory. Latroy Askew, a friend of [P]etitioner, testified that the two rode around all night on Saturday night and that [P]etitioner went home before the shootings occurred on Sunday. Ms. Glenda Ward, who lived in a complex near the crime scene, testified that she looked out her window one day and saw one man chasing another man up a hill before shooting him. She testified that the shooter was not [P]etitioner. Reginald Woodruff, a childhood friend of [P]etitioner, testified that [P]etitioner came to his house the morning of the shooting and stayed with him, his son, and another man while they were playing video games. Pierre Jarrett, who was playing basketball nearby at the time of the shooting, testified that he heard shots, saw a truck move up a hill before coming to a stop, and saw a man who was not [P]etitioner standing nearby

> with a gun. Paul Chandler, a retired army officer who was collecting cans in the area when the shooting occurred, testified that he saw the murder and that [P]etitioner was not the shooter. Malik Hardin, [P]etitioner's cousin, testified that he was with [P]etitioner at the time of the shooting and that Mr. Tim Bolden had, in fact, shot the victim while [P]etitioner was gambling with others nearby. In addition to these eyewitnesses, the defense presented the testimony of two witnesses who testified that Debra Turner had made statements to them to the effect that she intended to falsely implicate [P]etitioner in the victim's murder in order to retaliate against [P]etitioner for beating and hospitalizing her son.

Id. at *1-2

On November 5, 2012, Petitioner filed a petition for writ of error coram nobis claiming that he was entitled to a new trial based upon the newly discovered recantation of Ms. Hamilton, one of the witnesses at trial who identified Petitioner as the shooter. *Hodge v. State*, No. E2014-01005-CCA-R3-ECN, 2015 WL 4111767, at *1 (Tenn. Crim. App. July 8, 2015), *perm. app. denied* (Tenn. Dec. 10, 2015). The coram nobis court determined that "although the petition was filed well-outside the one-year statute of limitation, the statute should be tolled because [Petitioner] filed his petition just seven months after [Ms.] Hamilton signed the affidavit recanting her testimony." *Id*. at *4. Following a hearing, the coram nobis court entered a written order finding that Ms. Hamilton's "recollection of events has faded and/or changed over time and has been affected by talking with others about the events in question and her sympathies toward everyone involved." *Id*. Based on the inconsistencies in Ms. Hamilton's testimony at the coram nobis hearing, the coram nobis court found that "it was 'not reasonably well satisfied that [Ms. Hamilton's] prior testimony was false' and that it 'need not reach the issue of whether the new evidence may have resulted in a different judgment had it been presented at trial.'" *Id.* This court affirmed the coram nobis court's judgment denying the petition. *Id*. at *6.

Current Error Coram Nobis Petition

In the Petition filed on May 26, 2022, Petitioner claimed:

> The current petition raises substantial newly discovered/available evidence relative [to] the fact that long before the Petitioner's trial, there were undisclosed records reflective of the fact that Ms. Hamilton had an extensive arrest and conviction record from the state of Georgia and/or Tennessee of which had the jury known of [sic], in this close case, the same may have resulted in [Petitioner] not having been found guilty.

Petitioner claimed that the State failed to disclose Ms. Hamilton's record of arrests and convictions and that Ms. Hamilton did not mention her criminal record during her trial testimony.[2] Petitioner averred that "the information was recently discovered when [Petitioner] and his family reached out to Black Lives Matter[,]" which "took an interest in looking into his allegations of [Petitioner] having been wrongfully convicted and the system having turned a blind eye to it." Petitioner stated that, in April 2022, Black Lives Matter "utilized Georgia's public records act and obtained documents referencing Ms. Hamilton's misdeeds." Petitioner claimed that he received the Georgia records on April 11, 2022, and filed the Petition within two months of receipt of the claimed newly discovered evidence. He claimed that "said records are outcome determinative in discrediting the decisive witness that was essentially left unscathed in the eyes of the jury, trial court, and Tennessee Court of Criminal Appeals."

Attached as Exhibit A to the Petition were 187 pages of records from the state of Georgia. Exhibit A includes multiple copies of several documents and numerous documents that are illegible or only partially legible. A document titled "Accusation" showed that, in February 1997, Ms. Hamilton and Shelia Diane Rodgers were charged in Gordon County, Georgia, Case No. 12384-D, with four counts of theft by shoplifting—two of the counts were for "appropriating" items of clothing in the value of $100 or more and two of the counts were for "appropriating" items of clothing in the value of less than $100. Ms. Rodgers was also charged in a fifth count with "giving false name." A "Final Disposition" in Criminal Action Number 12394-D showed Ms. Rodgers pled guilty on September 15, 1998, to four counts of shoplifting and was sentenced to ten years with two years to be served in incarceration followed by eight-years' probation; Ms. Rodgers also pled guilty to the offense of giving false name and was sentenced to a concurrent term of twelve months. The "Final Disposition" has a check mark in the box for both "felony sentence" and "misdemeanor sentence."

Ms. Hamilton was indicted by the Gordon County Grand Jury on the four counts of theft in Case No. 12384-D. On August 24, 1998, Ms. Hamilton executed a waiver of trial by jury, and a bench trial was set for January 27, 1999. Identical copies of a "Final Disposition" in Case No. 12384-D are found on pages 121, 122, 160, and 161 of Exhibit

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[2] Although "an error *coram nobis* proceeding is not the appropriate procedural vehicle for obtaining relief on the ground that the petitioner suffered a constitutional due process violation under *Brady v. Maryland*, 373 U.S. at 87 (1963)," a coram nobis petitioner may attempt to show that because of a *Brady* violation, the petitioner was without fault in failing to discover evidence at trial and/or to support a petitioner's request for equitable tolling of the statute of limitations. *Nunley v. State*, 552 S.W.3d 800, 831 (Tenn. 2018). Petitioner did not raise a *Brady* violation as an issue in his brief in this appeal, and we will only consider the allegation as it relates to Petitioner's diligence in discovering Ms. Hamilton's criminal records.

A. Only the lower section of the final disposition is legible. That section contained Ms. Hamilton's signature and showed that the Final Disposition was entered on January 27, 1999. Based on the case number, in which 12 and 4-D are legible, the January 27, 1999, date, and Ms. Hamilton's signature, it is obvious that this is the final disposition of the theft by shoplifting charges in Case No. 12384-D. Although blurred, it appears that Ms. Hamilton was found guilty of one count of theft and sentenced to two years' incarceration.

The only fully legible conviction for Ms. Hamilton in Exhibit A is a certified copy of the "Final Disposition" in Criminal Action number 11171-H filed on July 24, 1996, found both on pages 60 and 81, showing that Ms. Hamilton was convicted by a jury for sale of cocaine and sentenced to twelve years with two years to be served followed by ten years on probation. An "Order of Supervised Reprieve" from the Georgia State Board of Pardons and Paroles for Criminal Action number 11171-H was issued on November 13, 1996. The "effective reprieve date" was November 26, 1996, and the order stated that Ms. Hamilton's sentence was "stayed until expiration of the sentence date" which was shown to be July 14, 1998.[3]

During direct examination at Petitioner's trial, Ms. Hamilton was asked if she had ever been convicted of a crime. She answered that she had been convicted for selling cocaine and that she was on probation.[4] On cross-examination, the following exchange between defense counsel and Ms. Hamilton occurred:

> Q. Ms. Hamilton, you told us about the one felony drug conviction you had when [the State] asked you if you had any drug--had any felony convictions. Do you have any others?
>
> A. No. I've had in the past[,] but it's been over ten years.
>
> Q. What was that for?
>
> A. Shoplifting.

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[3] Petitioner makes several claims in the Petition and in his brief that are not supported by the record or Exhibit A. There are no documents showing that on April 26, 1998, the date Mr. Boling was murdered, Ms. Hamilton was in jail in Georgia, that she was an absconder from probation, that she violated her probation in Criminal Action number 11171-H, or that she received a ten-year sentence for the theft charges with two years to be served in custody. Petitioner repeatedly conflates Ms. Rodgers' criminal records with those of Ms. Hamilton.

[4] The trial court as well as this court may take judicial notice of court records and actions in an earlier proceeding of the same case. *State v. Lawson*, 291 S.W.3d 864, 869 (Tenn. 2009). We take judicial notice of the trial transcript in Petitioner's direct appeal. *See Hodge* No. E2002-01794-CCA-R3-CD, Transcript of Evidence Volume IV, pp. 306-307.

. . .

Q. Ms. Hamilton, have you had any other felony drugs convictions--

A. No, sir.

Q. --any other felony convictions of any kind within the past ten years?

A. No, not that I know of, no.

Q. All right. Have you had any misdemeanor theft convictions in the past ten years?

A. No, I haven't.

Q. And the felony drug conviction you had was for selling cocaine?

A. Yes.[5]

The Petition claimed that Ms. Hamilton was "presented by the State to the jury as essentially pristine" and that "Petitioner's interest in presenting this newly discovered evidence of his innocence far outweighs the State's interests in preventing the litigation of sta[l]e claims[.]" The Petition stated that "a strict application of the statute of limitations would prevent [Petitioner] from presenting newly discovered evidence of actual innocence and due process requires tolling of the statute of limitations." Petitioner concluded by claiming that he "has certainly presented a credible and substantial case of new evidence of which when viewed in light of the entire case, may have resulted in a different result at trial" and that "warrant[ed] the appointment of counsel and an evidentiary hearing hereon [sic] his claims."

Order of the Coram Nobis Court

On June 22, 2022, the coram nobis court entered an order summarily dismissing the Petition. The order provided, in pertinent part:

> The [P]etition was filed on May 26[], 2022. The challenged testimony took place within the first-degree murder trial of [Petitioner] which was conducted in 2001, or in excess of 20 years earlier. Ms. Hamilton's prior

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[5] *See Hodge* No. E2002-01794-CCA-R3-CD, Transcript of Evidence Volume IV, pp. 315-317.

record does not constitute "newly discovered evidence within the meaning of T[ennessee] C[ode] A[nnotated section] 40-26-105. These convictions are, and have been, public record for the past two decades. Moreover, contrary to [Petitioner]'s assertion that this witness was described [at Petitioner's trial] as "without blemish," she admitted she was a convicted drug felon when she testified. Most significantly, however, [Petitioner] litigated a previous coram nobis claim wherein this same witness testified on behalf of [Petitioner]. Assuming, arguendo, that discovery of this witness's out of state record was not discoverable by [Petitioner] when the homicide case was tried, it has been over ten (10) years since this witness was called in the original coram nobis proceeding by [Petitioner]. Due diligence by [Petitioner] would compel the discovery of the witness'[s] criminal record during the investigation of her and/or during her testimony in 2013. All anyone had to do was ask her, and/or ask for production of this evidence.[6]

This [c]ourt has carefully reviewed the entirety of the materials filed by [Petitioner]. The "newly discovered evidence" is not evidence which could not have been discovered by the exercise of due diligence at some point within the last two decades. Moreover, contrary to [Petitioner]'s assertion, this evidence does not prove "actual innocence["], but at best was impeachment evidence against a witness who the jury knew to be a convicted felon at the time it assessed her credibility.

Accordingly, the Petition for Writ of Error Coram Nobis Relief is, respectfully, DENIED and DISMISSED.

Petitioner timely appealed.

ANALYSIS

Petitioner claims that the coram nobis court erred in summarily dismissing the Petition because "the [P]etition stated a colorable claim and Petitioner was reasonably diligent in discovering the new evidence." The State argues that the Petition is time-barred and that the criminal records attached to the Petition, "which existed at the time of the trial" do not "show actual innocence." We agree with the State.

[6] Footnote 1 to the order stated: "[Petitioner] took the position during the first coram nobis proceeding that this witness was present during the homicide but misrepresented certain facts during her testimony at trial. He is judicially estopped to now assert, as he alleges within the instant petition, that she may have been incarcerated at the time of the homicide."

Petitions for Writ of Error Coram Nobis

A writ of error coram nobis is an "extraordinary procedural remedy," filling only a "slight gap into which few cases fall." S*tate v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999) (citation omitted). Tennessee Code Annotated section 40-26-105(b) provides that coram nobis relief is available in criminal cases as follows:

> The relief obtainable by this proceeding shall be confined 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. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, 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.

The petition must show that there is a "reasonable basis" by which the court could conclude that the results of the proceedings "might have been different" if the evidence had been presented at trial. *State v. Vasques*, 221 S.W.3d 514, 527 (Tenn. 2007).

The contents of a petition for writ of error coram nobis are of primary importance. *Nunley v. State*, 552 S.W.3d 800, 826 (Tenn. 2018). The petition must state with specificity the substance of the evidence the petitioner claims is newly discovered. *Id*. at 829. "[C]oram nobis petitions with inadequate allegations are susceptible to summary dismissal on the face of the petition, without discovery or an evidentiary hearing." *Id*. at 831.

Statute of Limitations and Equitable Tolling

Petitions for writ of error coram nobis are subject to a one-year statute of limitations. Tenn. Code Ann. § 27-7-103 (2014); *Harris v. State*, 301 S.W.3d 141, 144 (Tenn. 2010) *overruled on other grounds by Nunley*, 552 S.W.3d at 831. "The statute of limitations is computed 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 filed, post-trial motion." *Harris*, 301 S.W.3d at 144 (citing *Mixon*, 983 S.W.2d at 670).

The one-year statute of limitations may be tolled to accommodate due process concerns, if the petition is "based upon new evidence of actual innocence discovered after expiration of the limitations period." *Nunley*, 552 S.W.3d at 828-29. "[T]imeliness under the statute of limitations is an 'essential element' of a coram nobis claim that must appear

on the face of the petition." *Id*. at 831. "[I]f the petitioner seeks equitable tolling of the statute of limitations, the facts supporting the tolling request must likewise appear on the face of the petition." *Id*. The petition must show "with particularity []why the newly discovered evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence." *Harris*, 301 S.W.3d at 152. Whether due process considerations require tolling of the statute of limitations is a mixed question of law and fact, which we review de novo with no presumption of correctness. *Id*. at 144 (citing *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007)).

Petitioner's Diligence in Discovering Ms. Hamilton's Criminal Records

Petitioner acknowledged that the one-year statute of limitations expired on August 25, 2003. Therefore, we must determine whether the Petition contained adequate information demonstrating that Petitioner is entitled to equitable tolling of the statute of limitations. Petitioner claimed that he and his family reached out to Black Lives Matter; that in April 2022, Black Lives Matter used Georgia's public record act to obtain Ms. Hamilton's criminal records; that he did not receive copies of the criminal record until April 11, 2022; and that he filed the Petition within two months of receiving the information. The Petition does not explain when or how Petitioner became aware of the fact that Ms. Hamilton had or might have had a criminal record in Georgia, when Petitioner and his family reached out to Black Lives Matter, or why it took almost two decades for Petitioner to inquire into Ms. Hamilton's Georgia criminal record. Although the Petition contained adequate information to show that Petitioner filed the Petition within one year of receiving Ms. Hamilton's criminal records, it did not provide sufficient facts showing Petitioner was reasonably diligent in discovering Ms. Hamilton's past criminal records, nor did it explain why the newly discovered evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence. The Petition on its face did not contain adequate allegations to toll the statute of limitations, and the coram nobis court did not abuse its discretion by summarily dismissing the petition without an evidentiary hearing. *See Nunley*, 552 S.W.3d at 826.

Result of the Trial

Even if we assumed that Petitioner had been diligent in discovering Ms. Hamilton's prior convictions for theft and that Ms. Hamilton's theft conviction was newly discovered evidence, there would still have to be "a reasonable basis" to conclude that the results of Petitioner's trial "might have been different" if the jury had known that Ms. Hamilton's theft conviction occurred less than ten years before Petitioner's trial or if Petitioner had been able to impeach Ms. Hamilton with that information.[7] *Vasques*, 221 S.W.3d at 527.

[7] Our supreme court in *Vasques* noted:

Petitioner has the burden to prove that the claimed newly discovered evidence was *likely* to have changed the result of the trial. *Nichols*, 877 S.W.2d at 737 (citing *State v. Goswick*, 656 S.W.2d 355, 358-60 (Tenn. 1983)).

Four witnesses, including Ms. Hamilton, identified Petitioner as the person who shot and killed Mr. Boling. Contrary to Petitioner's claims in the Petition and in his brief, Ms. Hamilton was not presented by the State to the jury "as essentially pristine," nor was she "unscathed in the eyes of the jury." The jury knew from the direct examination that Ms. Hamilton was a felon who had been convicted of selling cocaine. The jury knew as a result of the cross-examination that she was a convicted thief. We determine that there is not "a reasonable basis" to conclude that the results of the trial "might have been different" if the jury had known that Ms. Hamilton's admitted theft conviction had occurred less than, rather than more than, ten years before the trial or if Petitioner had been able to impeach Ms. Hamilton's testimony concerning the date of her theft conviction.

Actual Innocence

As previously noted, the one-year statute of limitations may be tolled to accommodate due process concerns 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. Ms. Hamilton's 1999 theft conviction may relate to Ms. Hamilton's credibility, but it does not prove that Petitioner is actually innocent of the murder of Mr. Boling and is not sufficient to toll the statute of limitations.

> Although not specifically addressed by the parties, it is our further view that whether the testimony qualifies as impeachment evidence may be relevant in the determination but is not controlling. Impeachment evidence might be particularly compelling under the circumstances of a particular case. Moreover, a complete restriction on the availability of coram nobis relief in the case of any newly discovered impeachment evidence would be inconsistent with the discretion afforded to our trial courts. Finally, the language of Tennessee Code Annotated section 40-26-105 makes no distinction between impeachment evidence and all other evidence. Thus, the ultimate question is the effect of the newly discovered evidence on the outcome when viewed under the standards in *Mixon*, our decision in *Workman* [*v. State*, 41 S.W.3d 100 (Tenn. 2001)], and our analysis in this case.

Vasques, 221 S.W.3d at 528 (internal citations omitted).

Conclusion

After reviewing the record and the Petition, we find the coram nobis court did not commit error by summarily dismissing the petition. We affirm the judgment of the coram nobis court.

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ROBERT L. HOLLOWAY, JR., JUDGE