

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

**BARRY LAMONT PRICE v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Madison County**  
**Nos. 89-955, 90-141, 90-494, 90-495, 90-496 Roy B. Morgan, Jr., Judge**

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**No. W2014-01209-CCA-R3-ECN - Filed October 3, 2014**

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Appellant, Barry Lamont Price, appeals the denial of his petition for writ of error coram nobis in which he challenged his 1991 guilty plea to three counts of the sale of cocaine, one count of driving on a revoked license, and one count of obtaining money by false pretenses and his effective ten-year sentence. We affirm the judgment of the coram nobis court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**  
**Pursuant to Rule 20 of the Rules of the Court of Criminal Appeals**

ROGER A. PAGE, J., delivered the opinion of the Court, in which JOHN EVERETT WILLIAMS and ALAN E. GLENN, JJ., joined.

Barry Lamont Price, Whitedeer, Pennsylvania, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Rachel E. Willis, Senior Counsel, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

On March 25, 1991, appellant pleaded guilty to driving on a revoked license, obtaining money by false pretenses, and three counts of sale of cocaine and received an effective sentence of ten years in the Tennessee Department of Correction. At the guilty plea hearing, the trial court reviewed the charges, their classifications, and the possible sentencing ranges. The court explained all the constitutional rights that appellant would be waiving by entering the plea. Appellant stated that he understood the consequences of the plea and the possible sentencing ranges.

In 2007, appellant filed a petition for post-conviction relief alleging that his trial counsel was ineffective and that his guilty plea was involuntary. The post-conviction court dismissed the petition, and this court affirmed the dismissal on appeal. See Barry L. Price v. State, No. W2007-02639-CCA-R3-PC, 2008 WL 4170264, at \*1 (Tenn. Crim. App. Sept. 8, 2008).

On September 26, 2013, appellant filed a petition for writ of error coram nobis in which he alleged that his sentence was unlawfully imposed because the trial court failed to engage in the appropriate sentencing colloquy and failed to make the appropriate sentencing findings of fact. He argued that the sentence was obtained in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. The coram nobis court dismissed the motion.

On appeal, appellant contended that the trial court erred in dismissing his petition. He asserted that his petition was timely because the “sentence was not properly imposed and finalized by the trial court . . . and accordingly, is not an actual judgment.” Barry L. Price v. State, No. W2013-02547-CCA-R3-ECN, 2014 WL 4385007, at \*4 (Tenn. Crim. App. Sept. 5, 2014). He argued that the trial court’s statement that “I accept the recommendation, you are now sentenced,” was insufficient to impose an actual sentence. Id. Appellant further argued that prior to accepting the guilty plea, the trial court did not advise him “of each of his specific constitutional rights, nor was he informed that the sentence could be used to enhance sentences for other, future Federal criminal convictions.” Id. Appellant maintained that as a result, his convictions were not valid “as they were in strict violation of the due process rights guaranteed him under the United States Constitution.” Id.

This court held that appellant’s coram nobis claim was barred by the one-year statute of limitations and that appellant failed to state a claim that was cognizable in an error coram nobis proceeding. Id. at \*6. This court also held that the petition could not be treated as either a petition for a writ of habeas corpus or a petition for post-conviction relief. Id. This court noted that appellant made no claim that the trial court lacked jurisdiction to sentence him, only that it was not done properly. Id. This court further noted that appellant was no longer confined pursuant to the challenged sentence, that he had previously filed a post-conviction petition, and that the instant petition was filed outside the statute of limitations. Id. Accordingly, this court affirmed the coram nobis court’s judgment. Id.

While the appeal on his first coram nobis petition was pending, appellant filed a second petition for writ of error coram nobis or habeas corpus on February 20, 2014. In the second coram nobis petition, appellant claimed that the trial court never informed him that his guilty plea had been accepted and that he has never been declared guilty as a result. Appellant further claimed that the trial court failed to adequately apprise him of the nature

of the charge and the presumption of innocence. On March 5, 2014, the coram nobis court entered an order dismissing the petition. This appeal followed.

A writ of error coram nobis is an “extraordinary procedural remedy,” filling only a “slight gap into which few cases fall.” State 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.

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.” State v. Vasques, 221 S.W.3d 514, 525–28 (Tenn. 2007) (citation omitted).

Coram nobis claims may be based upon any “newly discovered evidence relating to matters litigated at the trial” so long as the petitioner establishes that he or she was “without fault” in failing to present the evidence at the proper time. Harris v. State, 102 S.W.3d 587, 592 (Tenn. 2003). Coram nobis claims are “singularly fact-intensive,” are not easily resolved on the face of the petition, and often require a hearing. Id. at 592-93. The decision to grant or deny coram nobis relief rests within the sound discretion of the trial court. Vasques, 221 S.W.3d at 527-28.

A petition for the writ of error coram nobis must relate: (1) the grounds and the nature of the newly discovered evidence; (2) why the admissibility of the newly discovered evidence may have resulted in a different judgment had the evidence been admitted at the previous trial; (3) that the petitioner was without fault in failing to present the newly discovered evidence at the appropriate time; and (4) the relief sought by the petitioner. Freshwater v. State, 160 S.W.3d 548, 553 (Tenn. Crim. App. 2004). Newly discovered evidence is evidence that was unknown to the defendant at the time of the proceedings which are the subject of the coram nobis claim. Wlodarz v. State, 361 S.W.3d 490, 506 (Tenn. 2012). It has been repeatedly held that a coram nobis court is not required to hold an evidentiary

hearing when a petition for the writ of error coram nobis fails to meet the necessary prerequisites for granting relief. Cole v. State, 589 S.W.2d 941, 941–43 (Tenn. Crim. App. 1979).

Coram nobis claims are subject to a one-year statute of limitations. T.C.A. § 27-7-103. 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 v. State, 301 S.W.3d 141, 144 (Tenn. 2010). The issue of whether a claim is barred by an applicable statute of limitations is a question of law, which this court reviews de novo. Id. We must construe the coram nobis statute of limitations “consistent with the longstanding rule that persons seeking relief under the writ must exercise due diligence in presenting the claim.” Id.

The one-year statute of limitations may be tolled on due process grounds if the petitioner seeks relief based upon newly discovered evidence. Wilson, 367 S.W.3d at 234. In determining whether tolling is proper, the court must balance the petitioner’s interest in having a hearing with the State’s interest in preventing a claim that is stale and groundless. Harris, 301 S.W.3d at 145 (citing Workman v. State, 41 S.W.3d 100, 102 (Tenn. 2001)). Generally, “before a state may terminate a claim for failure to comply with . . . statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner.” Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992). The Burford rule consists of three steps:

- (1) determine when the limitations period would normally have begun to run;
- (2) determine whether the ground for relief actually arose after the limitations period would normally have commenced; and
- (3) if the grounds are “later-arising,” determine if, under the facts of the case, a strict application of the limitations period would effectively deny the petitioner a reasonable opportunity to present the claim.

Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995).

It appears that appellant on appeal has simply resubmitted the same appellate brief that he submitted to this court in the appeal of the coram nobis court’s denial of his first petition. He makes the same arguments that he made in his previous appeal. Specifically, he contends that his petition was timely because the “sentence was not properly imposed and finalized by the trial court . . . and accordingly, is not an actual judgment.” He argues that the trial court’s statement that “I accept the recommendation, you are now sentenced,” is insufficient to impose an actual sentence. Appellant further argues that prior to accepting the guilty plea,

the trial court did not advise him “of each of his specific constitutional rights, nor was he informed that the sentence could be used to enhance sentences for other, future Federal criminal convictions.” Appellant maintained that as a result, his convictions were not valid “as they were in strict violation of the due process rights guaranteed him under the United States Constitution.”

In appellant’s appeal of the denial of his first petition for writ of error coram nobis, this court held that his petition was untimely, that appellant failed to establish that the one-year statute of limitations should be tolled, that he failed to state claims cognizable in a coram nobis petition, and that the petition could not be treated as a petition for writ of habeas corpus or a petition for post-conviction relief. See Barry L. Price, 2014 WL 4385007, at \*6. For the same reasons that we rejected appellant’s claims in his previous appeal, we also reject his same claims in this appeal. See id.

When an opinion would have no precedential value, the Court of Criminal Appeals may affirm the judgment or action of the trial court by memorandum opinion when the judgment is rendered or the action taken in a proceeding without a jury and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. See Tenn. Ct. Crim. App. R. 20. We conclude that this case satisfies the criteria of Rule 20. The judgment of the coram nobis court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

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ROGER A. PAGE, JUDGE