

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION III

STATE OF TENNESSEE

VS.

17-01568

JASON WHITE,
DEFENDANT

ORDER DENYING PETITION FOR WRIT OF ERROR CORAM NOBIS

This cause came on to be heard August 10, 2023, on the pro se Petition for Writ of Error Coram Nobis filed June 28, 2023, and the record as a whole,

FROM ALL OF WHICH THE COURT FINDS that the petitioner, Jason White, was convicted of Conspiracy to Promote Manufacture Methamphetamine, a Class A felony. The conviction was affirmed in *State v. Jason White*, No. W2018-00329-CCA-R3-CD (Tenn. Crim. App. at Jackson, February 11, 2019). His two co-defendants, Kristina Cole and Montez Mullins were also tried and convicted in this trial.

The "newly discovered evidence" which the petitioner alleges should entitle him to a new trial is an affidavit from his co-defendant's stating that she witnessed Detective Mark Gaia make text messages from her cell phone. Petitioner, Jason White, states that asserts that this is confirmed by arrest records showing that Ms. Cole was in custody at the time of the messages being sent.

Trial courts may grant a criminal petitioner a new trial following a judgment of conviction under limited circumstances through the extraordinary remedy offered by a writ of error coram nobis. T.C.A. 40-26-105; *State v. Mixon*, 983 S.W.2d 661, 666 (Tenn. 1999). A writ of error coram nobis may be granted when the petitioner establishes the existence of newly discovered evidence relating to matters litigated at trial. T.C.A. 40-26-105; *State v. Mixon*, 983 S.W.2d 661, 668 (Tenn.1999). In order 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. In addition to describing the form and

substance of the evidence and demonstrating that it qualifies as "newly discovered evidence," the [petitioner] must also demonstrate with particularity (3) why the newly discovered evidence could not have been discovered in a more timely manner with the exercise of reasonable diligence; and (4) how the newly discovered evidence, had it been admitted at trial, may have resulted in a different judgment. *Id.* at 672. Before the petitioner is entitled to relief, he must establish and the trial court must find that a reasonable basis exists for concluding that, had the evidence been presented at trial, the results of the proceeding might have been different. *State v. Vasques*, 221 S.W.3d 514, 527 (Tenn. 2007).

In considering whether to set a hearing on this Writ of Error Coram Nobis, the Court must establish the existence of "newly discovered evidence" of which a hearing would be warranted. Following the factors set out in *Mixon*, the Court finds that the Petitioner has failed to satisfy these factors and therefore the Writ for Coram Nobis is hereby **DENIED** without a hearing.

In support of said ruling, the Court finds that the affidavit attached to Petitioner's Writ of Coram Nobis is submitted as an impeachment tool to the trial testimony of Detective Gaia. This affidavit has only been provided after the conviction, sentencing and exhaustion of other appellate means of the Petitioner. After the Court's review of the attached affidavit, and the circumstances in which it was provided, the Court does not find affidavit, nor the information contained therein, to be credible and therefore is not considered "newly discovered evidence".


Even if the Court were to consider the affidavit to be credible, the content and basis of the affidavit have been heavily litigated during the trial and post-conviction stages of litigation. The Petitioner states that Ms. Cole's arrest record corroborates the content of the affidavit. This arrest record was known of, and available to Petitioner at trial. Petitioner contends that the information in the affidavit was not available because Ms. Cole did not testify and Petitioner could not compel her to testify because she was a co-defendant. However, the Petitioner references Ms. Cole's text message logs which would have shown when the texts were sent. This, along with the Ms. Cole's arrest record, would have corroborated the assertion that the Petitioner was not texting the co-defendant about the narcotics at issue. The text logs, the arrest records, the testimony of, and opportunity to cross examine Detective Gaia were all available at trial. The

only thing this affidavit adds is the convenient addition that the co-defendant now asserts that she witnessed Detective Gaia using her phone to send the messages. Again, the Court does not find this addition to be credible.

By failing to establish that the information presented qualifies as “newly discovered evidence”, the Petitioner does not make reach the further determination of whether said evidence would have resulted in a different verdict.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Petition for Writ of Error Coram Nobis is hereby denied.

ENTERED this 10th day of August, 2023.



JAMES JONES, JR., Judge
Criminal Court, Div. III
30th Judicial District at Memphis

Filed 8/10/03
Heidi Kuhn, Clerk
BY [Signature] D.C.