

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

STATE OF TENNESSEE

VS.

17-01568

KRISTINA COLE,
DEFENDANT.

ORDER DENYING PETITION FOR WRIT OF ERROR CORAM NOBIS

This cause came on to be heard September 7, 2023, on the pro se Petition for Writ of Error Coram Nobis filed August 23, 2023, and the record as a whole,

FROM ALL OF WHICH THE COURT FINDS that the petitioner, Kristina Cole, was convicted of Conspiracy to Promote Manufacture Methamphetamine, a Class A felony. The conviction was affirmed in *State v. Kristina Cole*, No. W2017-01980-CCA-R3-CD (Tenn. Crim. App. at Jackson, November 5, 2018). Her two co-defendants, Jason White and Montez Mullins were also tried and convicted in this trial.

The "newly discovered evidence" which the petitioner alleges should entitle her to a new trial is misconduct, both judicial and prosecutorial, by Judge Robert Carter and Paul Haggerman, respectively.

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, they 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).

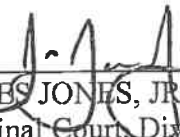
In considering whether to set a hearing on this Writ of Error Coram Nobis, the Court must establish the existence of “newly discovered evidence” of which a hearing would be warranted. Following the factors set out in *Mixon*, the Court finds that the Petitioner has failed to satisfy these factors and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


In support of said ruling, the Court finds the following. The Petitioner list three (3) grounds that would entitle her to relief. Grounds one (1) and two (2) reference misconduct that was conducted by Judge Robert Carter and Assistant District Attorney Paul Haggerman. The Petitioner alleges the attorney and the judge had an “unspoken agreement”. Yet, the Petitioner fails to present anything that would support any such allegations or how these grounds satisfy the required prongs and analysis in *Mixon*. Ground three (3) asserts newly discovered evidence that could prove Petitioner’s “actual innocence”. However, the Petitioner fails to present anything that would constitute “newly discovered evidence”. The petitioner makes reference to information in a suppression motion filed in 2017, but clearly this information would not be new information if contained within a suppression motion in 2017. No other information nor allegations are made that would warrant any type of relief.

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 7th day of September, 2023.


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

Filed 9.7.23
Heidi Kuhn, Clerk
BY  D.C.