

**IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE**

ZACHARY RYE ADAMS,
PETITIONER,

vs.

STATE OF TENNESSEE,
RESPONDENT.

No. 17-CR-10-PC

FILED 8 DAY OF Jan, 2025 AT 8:30 AM PM
TAMMIE WOLFE, CLERK
BY T. Wright, Deputy CLERK

MOTION TO DISMISS POST-CONVICTION CLAIMS

COMES NOW, the State of Tennessee, by and through counsel of record, and files this *Motion to Dismiss* specific claims raised in Petitioner Zachary Rye Adams's ("Petitioner Adams") *Second Amended Petition for Post-Conviction Relief* in which the facts alleged fail to establish that the claims for relief have not been previously determined or waived. For cause, the State would show as follows:

- 1. Under Tenn. Code Ann. 40-30-108(c), a district attorney general has the option to assert by a *Motion to Dismiss* that a post-conviction relief claim is barred**

The State is required to file an answer or a motion to dismiss within thirty (30) days of the filing of the amended petition or the notice that an amended petition will not be filed, unless the time is extended for good cause. *See* Tenn. Sup. Ct. R. 28, § 6(C)(6); T.C.A. § 40-30-108(a). Rather than file an answer, the State has the option of asserting by way of a motion to dismiss that: "(1) The petition is barred by the statute of limitations; (2) the petition was not filed in the court of conviction; (3) The petition asserts a claim for relief from judgments entered in separate trials or proceedings; (4) A direct appeal or post-conviction petition attacking the same conviction is currently pending in the trial or appellate courts; (5) The facts alleged fail to show that the petitioner is entitled to relief; or (6) The facts alleged fail to show that the claims for relief have

not been waived or previously determined.” See T.C.A. § 40-30-108(c). If a post-conviction court determines that “a colorable claim is not asserted by the petition, the court *shall* (emphasize added) enter an order dismissing the petition or an order requiring that the petition be amended.” Tenn. Sup. Ct. R. 28, § 6(B)(4)(a).

2. All *coram nobis* claims raised by Petitioner Adams’s *Second Amended Petition for Post-Conviction Relief* are now barred as (1) previously determined and/or (2) on *res judicata* grounds.

On September 10, 2024, this Court entered an order dismissing Petitioner Adams’s *Petition for Writ of Error Coram Nobis* (Case No. 2024-CR-169). From this dismissal date, Petitioner Adams had thirty (30) days to file a notice of appeal with the Tennessee Court of Criminal Appeals. No appeal was filed within the requisite period by Petitioner Adams, meaning this Court’s September 10, 2024, order is now a final order. This fact is important to highlight considering Petitioner Adams is now attempting to relitigate fully adjudicated *coram nobis* claims and issues in his *Second Amended Petition for Post-Conviction Relief*. Specifically, the following paragraphs in Petitioner Adams’s *Second Amended Petition for Post-Conviction Relief* contain *coram nobis* claims:

1. Paragraph 17;
2. Paragraph 19, 19(a), 19(b), and 19(c);
3. Paragraph 35, 35(a),
4. Paragraph 36;
5. Paragraph 37;

(a) Claims “previously determined” by *coram nobis* court.

In post-conviction relief proceedings, a ground for relief has been “previously determined” when “a court of competent jurisdiction has ruled on the merits after a full and fair hearing.” Tenn.

Code Ann. § 40-30-106(h). “A full and fair hearing has occurred where the petitioner is afforded the opportunity to call witnesses and otherwise present evidence, regardless of whether the petitioner actually introduced any evidence.” *Id.*; see *Miller v. State*, 54 S.W.3d 743, 747-48 (Tenn. 2001). Issues that have been “previously determined” may not be relitigated in a post-conviction petition. See Tenn. Code Ann. § 40-30-106(f).

On June 14, 2024, this Court held a full hearing on the State of Tennessee’s *Motion to Dismiss the Petition for Writ of Error Coram Nobis*, with both parties allowed the opportunity to present evidence on whether or not this Court should equitably toll the statute of limitations concerning Petitioner Adams’s *coram nobis* claims. Moreover, this Court afforded both parties multiple opportunities after this hearing to submit supplemental briefs before ruling. As of September 10, 2024, all of Petitioner Adams’s *coram nobis* claims were adjudicated by this Court, on the merits, and dismissed. Petitioner Adams cannot relitigate “previously determined” *coram nobis* claims by simply repackaging them as post-conviction claims. All *coram nobis* claims Second Amended Petition for Post-Conviction Relief should be barred and dismissed pursuant to Tenn. Code Ann. § 40-30-106(f) and/or Tenn. Sup. Ct. R. 28, § 6(B)(4)(a).

(b) Res Judicata Grounds

Alternatively, this Court should find that Petitioner Adams is barred from relitigating any *coram nobis* claims on res judicata grounds. Res judicata is a claim preclusion doctrine that promotes finality in litigation.” *Young v. Barrow*, 130 S.W.3d 59, 64 (Tenn. Ct. App. 2003). The judicial doctrine precludes “a second suit between the same parties or their privies on the same cause of action with respect to all the issues which were or could have been litigated in the former suit.” *Young*, 130 S.W.3d at 64. In order for the doctrine to apply, “the prior judgment must conclude the rights of the parties on the merits.” *Young*, 130 S.W.3d at 64. “Parties asserting a res

judicata defense must demonstrate (1) that a court of competent jurisdiction rendered the prior judgment, (2) that the prior judgment was final and on the merits, (3) that both proceedings involved the same parties or their privies, and (4) that both proceedings involved the same cause of action.” *Young*, 130 S.W.3d at 64. Furthermore,

‘It is a fundamental principle of jurisprudence that material facts or questions, which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions becomes res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form the issue may take in the subsequent action whether the subsequent action involves the same or a different form or proceedings, or whether the second action is upon the same or a different cause of action, subject matter, claim, or demand, as the earlier action. In such cases, it is also immaterial that the two actions are based on different grounds, or tried on different theories, or instituted for different purposes, and seek different relief,’ citing cases.

Gerber v. Holcomb, 219 S.W.3d 914, 919 (Tenn. Ct. App. 2006) (quoting *Cotton v. Underwood*, 223 Tenn. 122, 442 S.W.2d 632, 635 (1969)).

As applied here, all requirements set forth under *Young* are satisfied. Hardin County Circuit Court, being a court of competent jurisdiction for *corum nobis* matters, handled Petitioner Adams’s *Petition for Writ of Error Corum Nobis* and entered a judgment concerning same on September 10, 2024. Given that Petitioner Adams did not appeal the September 10, 2024, judgment, the order became a final order, on the merits, on or about October 11, 2024. Both proceedings involve Petitioner Adams and the State of Tennessee. Lastly, both proceedings involve *coram nobis* issues/claims. As such, the State of Tennessee requests that this Court find that res judicata bars Petitioner Adams from relitigating *coram nobis* issues in the present post-conviction relief proceeding.

3. All “new evidence” claims raised by Petitioner Adams’s *Second Amended Petition for Post-Conviction Relief* facially cannot satisfy the *Dellinger* standard.

A petitioner may raise a claim of actual innocence based on new scientific evidence in a petition for post-conviction relief. *See Dellinger v. State*, 279 S.W.3d 282, 290-91 (Tenn. 2009); *see also* Tenn. Code Ann. §§ 40-30-102(b)(2), -117(a)(2). Claims of actual innocence that are not based on newly discovered scientific evidence are *not cognizable* (emphasis added) in a petition for post-conviction relief. *See Kevin L. French v. State*, No. M2019-01766-CCA-PC-R3, 2021 WL 1100765, 20 (Tenn. Crim. App. Mar. 3, 2021); *Shaun Alexander Hodge v. State*, No. E2009-02508-CCA-R3-PC, 2011 WL 3793503, at *7-8 (Tenn. Crim. App. Aug. 26, 2011), perm. app. denied (Tenn. Feb. 15, 2012); *James W. Vanover v. State*, No. E2010-00203-CCA-R3-PC, 2011 WL 3655136, 5 (Tenn. Crim. App. Aug. 19, 2011), perm. app. denied (Tenn. Oct. 18, 2011); *see also Dellinger*, 279 S.W.3d at 291 n.7.

6. Paragraph 18(a) [Dellinger claim]

7. Paragraph 18(b) [Dellinger claim]

8. Paragraphs 35 and 35(a),

9. Paragraph 36;

10. Paragraph 37;

Here, Petitioner Adams's claims of actual innocence pursuant to *Dellinger* are not based on newly discovered scientific evidence, but instead on his own self-serving alibi, the (alleged) unsworn statements of a former security manager at Community South Bank, and conclusory assertions regarding ATM data that lack any evidentiary support. These claims facially are not based on newly discovered scientific evidence and Petitioner Adams is not entitled to post-conviction relief on any substantive *Dellinger* set forth above. As such, each alleged Dellinger claim should be dismissed by this Court.

4. Substantive constitutional claims raised by Petitioner Adams's *Second Amended Petition for Post-Conviction Relief* are barred on waiver grounds.

Similar to claims that have been previously determined, Tenn. Code Ann. 40-30-106(g) seeks to prevent post-conviction proceedings from being used as a substitute for direct review and appeal. *Woodard v. State*, No. M202200162CCAR3PC, 2022 WL 4932885, 3 (Tenn. Crim. App. Oct. 4, 2022). Essentially, a defendant may not withhold constitutional claims at trial for later litigation in post-conviction proceedings. *Id.*, citing Tenn. Code Ann. § 40-30-110(f) (“There is a rebuttable presumption that a ground for relief not raised before a court of competent jurisdiction in which the ground could have been presented is waived.”); also see *Brown v. State*, 489 S.W.2d 268, 270 (Tenn. Crim. App. 1972) (“Our procedure does not permit one the practice of deliberately withholding the timely assertion of his Constitutional rights upon his trial, to save them back for post-conviction attack in the event of a conviction.”). Furthermore, it appears clear that the legislature intended to restrict somewhat the ability of convicted criminals to collaterally attack their convictions, and, to a large extent, the availability and extent of post-conviction remedies lie within the discretion of the legislature. See *Casey v. State*, 2018 WL 2259182, 3 (Tenn. Crim. App. May 17, 2018).

A ground for relief is deemed waived if “the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented” unless (1) the claim is based on a constitutional right that was not recognized as existing at the time of the trial and is to be applied retroactively or (2) the failure to present the claim was the result of state action that violates the federal or state constitution. T.C.A. § 40-30-106(g). “A ground for relief is previously determined if a court of competent jurisdiction has ruled on the merits after a full and fair hearing.” T.C.A. § 40-30-106(h).

In determining whether a claim contained in a petition for post-conviction relief should be dismissed without a hearing, the post-conviction court should review the petition to determine whether the petition asserts a colorable claim. *Burnett v. State*, 92 S.W.3d 403, 406 (Tenn. 2002). A colorable claim is defined as “a claim that, if taken as true, in the light most favorable to the petitioner, would entitle [the] petitioner to relief under the Post-Conviction Procedure Act.” *Id.* (quoting Tenn. Sup. Ct. R. 28, § 2(H)). “[I]f the facts alleged, taken as true, fail to show that the petitioner is entitled to relief, or in other words, fail to state a colorable claim, the petition shall be dismissed.”

The Second Amended Petition for Post-Conviction Relief includes the following stand-alone constitutional claims:

1. Paragraph 38;
2. Paragraph 39;
3. Paragraph 41
4. Paragraph 42
5. Paragraph 44;
6. Paragraph 45;

Here, Petitioner Adams could have properly presented these stand-alone claims to the original trial court because they existed at the time. Petitioner Adams also could have properly sought relief on appeal, but he failed to do so. As such, these stand-alone constitutional claims appear to be waived and this Court should summarily dismiss these claims. *See, e.g., McNair v. State*, No. E2021-00219-CCA-R3-PC, 2022 WL 2115087, 8 (Tenn. Crim. App. June 13, 2022) (finding that petitioner waived any free-standing claim regarding the composition of the petit jury by failing to present it in a proceeding before a court of competent jurisdiction in which the ground

could have been presented); *Roberson v. State*, No. E2020-00643-CCA-R3-PC, 2021 WL 2373819, 19 (Tenn. Crim. App. June 9, 2021) (finding that petitioner waived a free-standing claim regarding inappropriate closing argument by failing to present this ground on direct appeal).

Petitioner Adams has waived these remaining stand-alone claims due to his failure to raise them at trial or on direct appeal. *See* T.C.A. § 40-30-106(g). Therefore, each waived stand-alone claim identified above should be dismissed from the *Second Amended Petition for Post-Conviction Relief*.

Conclusion

For the reasons stated in this *Motion to Dismiss*, the State of Tennessee respectfully requests that this Court dismiss all claims contained in Petitioner Adams's *Second Amended Petition for Post-Conviction Relief* that identified above as (1) previously determined; (2) failing to satisfy *Dellinger*, and/or (3) were waived.

Respectfully Submitted:

/s/ Amy P. Weirich /

Amy P. Weirich, BPR (#014441)
Special Counsel
25th Judicial District
P.O. Box 38
Somerville, Tennessee 38068
(901) 465-7351
apweirich@tndagc.org

/s/ Christopher V. Boiano /

Christopher V. Boiano, BPR (#030076)
Assistant Attorney General
18th Judicial District
113 West Main Street
Cordell Hull Building, 3rd Floor.
Gallatin, Tennessee 37066
(615) 451-5810
cvboiano@tndagc.org

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been emailed and mailed to Douglas Bates IV, attorney for Petitioner Adams, on this 7th day of January, 2025.

Douglas Thompson Bates, IV
Bates & Bates Law Office
406 W. Public Sq., 2nd Floor, Bates Building
P.O. Box 1
Centerville, TN 37033
dtbates4@bates.law

Crystal M. Etue, Esq.
LAW OFFICES OF CRYSTAL ETUE, PLLC
219 3rd Ave. North
Franklin, TN 37064
crystal@etuelaw.com

/s/ Christopher V. Boiano /

Christopher V. Boiano