

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 19 DAY OF July, 2024 AT 2:15 AM/PM

TAMMIE WOLFE, CLERK

BY Shirley J. Adams CLERK

**STATE'S SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO DISMISS
THE PETITION OF WRIT OF ERROR CORAM NOBIS WITHOUT AN
EVIDENTIARY HEARING**

COMES NOW the State of Tennessee, by and through the undersigned, and moves this Honorable Court to consider additional recent authority, *Thomas Edward Clardy v. State of Tennessee*, No. M2021-00566-SC-R11-ECN, 2024 WL 3157350 (Tenn. June 25, 2024), authored by Chief Justice Holly Kirby and issued on June 25, 2024, addresses the crucial issue at bar and is submitted herewith in support of the State's Motion to Dismiss the Petition of Writ of Error Coram Nobis Without an Evidentiary Hearing.

The Clardy court reviewed the extensive case law on the issue which was cited by the State in its Motion to Dismiss Writ of Error Coram Nobis Without an Evidentiary Hearing. The Supreme Court of Tennessee noted that "we have not, however, elaborated on the standard for proof in coram nobis cases to support a decision to toll the statute of limitations. This case allows us to do so." *Clardy*, 2024 WL 3157350 at 12. In as much as Petitioner Adams is seeking such relief in his Petition for Writ of Error Coram Nobis, specifically, tolling the statute of limitations because of alleged newly discovered evidence and ultimately granting him a new trial, the *Clardy* opinion goes to the heart of the State's Motion to Dismiss. *Clardy* provides additional support to the

argument set forth in the State's Motion to Dismiss and argued before this Honorable Court on June 21, 2024. Still further, the State submits that the mandates set forth in *Clardy* make that which was clear in *Nunley v. State*, 552 S.W.3d 800 (Tenn. 2018), that Petitioner Adams' writ should be dismissed without an evidentiary hearing, *crystal clear*.

Introduction

The underlying facts in *Clardy* are as follows: Thomas Edward Clardy filed his Petition for a Writ of Error Coram Nobis many years after the expiration of the statute of limitations. Petitioner Clardy asked the court to toll the statute under the *Workman v State* tolling exception adopted by the Tennessee Supreme Court. 41 S.W.3d 100 (Tenn. 2001).

After a hearing on the tolling issue, the coram nobis court in *Clardy* dismissed the petition as untimely. The Court ruled that the new evidence did not show that the petitioner was actually innocent of the crimes of which he was convicted, thus not entitled to tolling to the statute of limitations.

The Court of Criminal Appeals subsequently reversed the coram nobis court on the untimeliness issue and remanded it for a hearing on the allegations of the petition.

On appeal, Tennessee's Supreme Court reversed the Criminal Court of Appeals, reinstating the coram nobis court's ruling and elaborated on the standard for proof required to support a decision to toll the statute of limitations in coram nobis cases. In fact, the court said that "the coram nobis court's procedure and analysis was spot on." *Clardy*, 2024 WL 3157350 at 15.

Because the Tennessee Supreme Court found that the procedure and analysis of the coram nobis court was "spot on," it is appropriate for the State to begin with the standard explicitly set forth in *Clardy* with respect to tolling and newly discovered evidence that demonstrates actual innocence.

Standard for Equitable Tolling

Nunley established that petitions for writs of error coram nobis must be pled with specificity and may be dismissed on their face without discovery, an evidentiary hearing, or notification to the opposing party if they do not meet the required standards. It emphasized the necessity of showing actual innocence through newly discovered evidence discovered after the limitations period. *Nunley*, 552 S.W.3d 800, 823.

In *Clardy*, the Tennessee Supreme Court reaffirms and builds on the *Nunley* standard, specifying that the petitioner must present newly discovered evidence of actual innocence discovered after the expiration of the limitation period to qualify for equitable tolling. *Clardy*, 2024 WL 3157350 at 13. Specifically, the court held as follows:

In sum, if a petition for a writ of error coram nobis is not timely filed, and the petition seeks tolling of the one-year statute of limitations, the coram nobis court should first ascertain whether the petition cites new evidence discovered after expiration of the limitations period, and whether the coram nobis petition shows it was filed no more than one year after the petitioner discovered the new evidence. If so, the coram nobis court should assume *arguendo* the veracity of the new evidence cited in the coram nobis petition, for the purpose of assessing whether to toll the statute of limitations. To grant tolling, the coram nobis court must find that the new evidence would, if credited, clearly and convincingly show that the petitioner is actually innocent of the underlying crime, i.e., that the petitioner did not commit the crime. *Keen*, 398 S.W.3d at 612. If tolling is granted, the coram nobis court may then proceed to address the merits of the coram nobis petition, under the standards in the coram nobis statute, Tennessee Code Annotated section 40-26-105(b).

Clardy, 2024 WL 3157350 at 13.

Clardy reinforces *Nunley*'s requirement that equitable tolling be based on newly discovered evidence of actual innocence. *Id.* It further clarifies that the coram nobis court must assess whether the new evidence, if credible, would demonstrate that the petitioner is actually innocent of the underlying crime. *Id.*

Petitioner Adams' Petition Fails to Present Newly Discovered Evidence of Actual Innocence

Respectfully, *Clardy's* application to Petitioner Adams' *Petition for Writ of Error Coram Nobis* results in a single outcome: Adams' petition does not meet the requirements of the equitable tolling exception and dismissal of the petition is required. Additionally, *Clardy* simplifies this analysis by directing coram nobis courts to examine whether the new evidence contained in the petition (if credible) clearly and convincingly shows that the petitioner is actually innocent of the underlying crime.

Petitioner Adams' alleged "newly discovered evidence" consists of (1) the unsworn statements of Lisa Sanders; (2) the unsworn statements of Jason Autry; (3) a signed affidavit of investigator Katie Spirko; and (4) a signed affidavit of trial counsel Jennifer Thompson. As to the credibility of the statements made by Lisa Sanders and Jason Autry, the State would reference and incorporate prior arguments presented in its Motion to Dismiss, Reply, and Post-Hearing Response, that focused on the unsworn statements being paraded as credible by Petitioner Adams. Additionally, the affidavits of Katie Spirko and Jennifer Thompson are completely devoid of any facts indicating any personal knowledge that Petitioner Adams is actually innocent of the underlying crime. All four (4) exhibits fail to offer this Court any credible new evidence that shows that Petitioner Adams is actually innocent of the underlying crime. As cited above, *Clardy* requires significant, credible new evidence demonstrative of the petitioner's actual innocence be included in filing of a coram nobis petition. Petitioner Adams' Petition for Writ of Error Coram Nobis falls far short of the threshold set forth in *Clardy* to achieve equitable tolling.


Moreover, Petitioner Adams' own admissions to multiple unrelated individuals concerning his involvement in the kidnapping, rape, and murder of Holly Bobo were the most incriminating pieces of evidence that the State of Tennessee presented at trial. The admissions came from the

Petitioner's own mouth, not anyone else, including co-defendant Jason Autry. As was the case during his trial, Petitioner Adams' admissions are highly problematic for him in a coram nobis proceeding. *Clardy* held "to grant tolling, the coram nobis court must find that the new evidence would, if credited, clearly and convincingly show that the petitioner is actually innocent of the underlying crime, i.e., that the petitioner did not commit the crime". *Id.* at 13. Petitioner Adams cannot show that he is actually innocent of the underlying crime, i.e., that he did not commit the crime, in light of his numerous admissions.

Conclusion

For the reasons stated its Motion to Dismiss, Reply, Post Hearing Response, and this Supplement Response, the State requests that this Court dismiss Petitioner Adams' coram nobis petition without an evidentiary hearing. It is time-barred, fails to allege specific facts showing entitlement to equitable tolling and because the information contained in the petition is not newly discovered evidence. Ultimately, Petitioner Adams cannot and has not shown that he is actually innocent of the underlying crime which *Clardy* has made essential to trigger equitable tolling for untimely coram nobis petitions. Even without consideration of the other proof offered at trial, Petitioner Adams' numerous admissions of guilt are ruinous to his claims of actual innocence, and he is not entitled to relief from this Court.

Respectfully submitted,



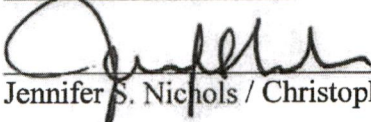
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been emailed and mailed to Douglas Bates, attorney for Petitioner Adams, on this 19th day of July 2024.

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