

THE SUPREME COURT OF TENNESSEE

PHILLIP R. WORKMAN,

Petitioner,

vs.

Cause No.: W2001-00774-SC-R11-PD

STATE OF TENNESSEE,

Respondent.

PETITION FOR REHEARING

Comes now your Petitioner, Philip R. Workman, through his undersigned counsel of record, and moves this Court pursuant to Rule 39(a)(4) of the Tennessee Rules of Appellate Procedure for Rehearing, insofar as this Honorable Court failed to rule upon two of the claims presented before the Court in Mr. Workman's Rule 11 Application for Permission to Appeal. In support of this Motion your Petitioner would show unto the Court as follows:

1. On March 29, 2001, Philip Workman filed pleadings in the Criminal Court of Shelby County Tennessee seeking (1) a Writ of Error Coram Nobis, (2) to reopen his post conviction petition, and (3) declaratory judgment that to execute a person with a substantial claim of innocence would violate the Tennessee Constitution.

2. On March 30, 2001 this Honorable Court entered its judgment, reversing the Court of Criminal Appeals and granting Mr. Workman a Petition for Writ of Coram Nobis. However, the Court's majority opinion and judgment did not address whether the Motion to Reopen, and the Petition for Declaratory Judgment were granted or denied. (See Judgment of this Honorable

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Court attached to Exhibit 1). Thus, the Court has inadvertently failed to rule upon these two outstanding claims, and this Petition to Rehear is filed to call this omission to this Honorable Court's attention.

Wherefore Premises Considered, Philip R. Workman prays this Court to grant the Petition to Rehear, to the extent that the Court should rule upon the Rule 11 application with respect to Mr. Workman's Motion to Reopen his Petition for Post Conviction Relief, and Mr. Workman's Petition for Declaratory Judgment.

Respectfully Submitted,

Robert L. Hutton (#15496)
GLANKLER BROWN PLLC
One Commerce Square - Suite 1700
Memphis, Tennessee 38103
(901) 525-1322

By: Robert L. Hutton
Robert L. Hutton

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via facsimile to Glen Pruden at (615) 532-7791 this 9th day of April, 2001.

Robert L. Hutton

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
March 29, 2001 Session

PHILIP R. WORKMAN v. STATE OF TENNESSEE

Criminal Court for Shelby County
No. B81209, P-3908, and P-3841

No. W2001-00774-SC-R11-PD
Filed March 30, 2001



JUDGMENT

This cause came to be heard upon the application for permission to appeal filed by Philip R. Workman and the answer in opposition filed on behalf of the State of Tennessee.

The Court is of the opinion that due process requires that the decision of the trial court dismissing the writ of error coram nobis should be reversed and the case remanded for a hearing. At the hearing, Workman will have the opportunity to establish that newly discovered evidence may have resulted in a different judgment if the evidence had been admitted at the previous trial. See Tenn. Code Ann. § 40-26-105. If he makes this showing, and if he also establishes that he "was without fault" in failing to present the newly discovered evidence at the appropriate time, he will be entitled to a new trial. *Id.*; see also *Slane v. Mixon*, 983 S.W.2d 661, 673 n.17 (Tenn. 1999) (setting out the showing required if the newly discovered evidence is recanted testimony).

In accordance with the opinion filed herewith, it is, therefore, ordered and adjudged by this Court that the judgment of the Court of Criminal Appeals is reversed, and the case is remanded to Division III of the Criminal Court for Shelby County for a hearing on the petition for writ of error coram nobis. A stay of the execution is granted.

Costs of the appeal are taxed against the State of Tennessee.