

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE
DIVISION I



JOSEPH WEBSTER)
Petitioner,)
)
V.)
)
STATE OF TENNESSEE,)
Respondent.)

CASE NO. 2005-B-1384
(Error Coram Nobis)

ORDER

This cause is before the Court upon the State’s filing of a “Notice of Intent” on October 29, 2020, to vacate and dismiss the first degree murder conviction against the Petitioner which occurred on March 1, 2006, after a jury trial. On October 30, 2020, through his attorney, the Petitioner filed to reopen his post-conviction petition and be granted relief pursuant to a writ of error coram nobis. Historically in this case, the Petitioner had filed a motion for a new trial which was denied through this Court. Upon appeal, the Tennessee Court of Criminal Appeals affirmed the decision of the trial court, and application to appeal to the Tennessee Supreme Court was denied. *State v. Webster*, No. M200700050CCAR3CD, 2008 WL 2229208 (Tenn. Crim. App. May 29, 2008). On October 11, 2007, the Petitioner filed a *pro se* writ of error coram nobis, which was dismissed by this Court on October 26, 2007. The Petitioner filed a *pro se* Petition for Post-Conviction relief on January 26, 2009, with this Court, and was ordered an appointed counsel on February 27, 2009. After hearings on the matter, the Court found the Petitioner had failed to prove the factual allegations by clear and convincing evidence and denied the request for post-conviction relief on June 15, 2009. Additionally, the Court also concluded the Petitioner did not receive ineffective assistance of counsel, with a finding that the trial counsel made sound, if potentially

unsuccessful, tactical decisions. That determination was upheld on appeal to the Tennessee Court of Criminal Appeals on June 28, 2010, and application to appeal to the Tennessee Supreme Court was denied. *Webster v. State*, No. M200901540CCAR3PC, 2010 WL 2594028 (Tenn. Crim. App. June 28, 2010). A second writ of error coram nobis came before the Court on March 29, 2014. After a hearing on the matter and a review of issues in prior proceedings, the Court found a change in testimony was not new evidence which would have resulted in a different judgment, and dismissed the petition on November 15, 2014. This second dismissal was affirmed on appeal to the Tennessee Court of Criminal Appeals on November 30, 2015. *Webster v. State*, No. M201402508CCAR3ECN, 2015 WL 7720317 (Tenn. Crim. App. Nov. 30, 2015).

Without detailing all of the prior hearings and testimony since his trial, the Petitioner's position has been that he was not the perpetrator of this homicide. The testimony at the motion for new trial offered by the Petitioner indicated that he knew who killed the victim Leroy Owens, however he did not reveal the perpetrator's identity to his attorney prior to trial nor during his trial testimony. The Court denied relief at that time and this decision was affirmed by the Court of Criminal Appeals. Post-conviction hearings and writs of error coram nobis have been held and affirmed upon appeal. These petitions alleged witness recantations and ineffective assistance of counsel.

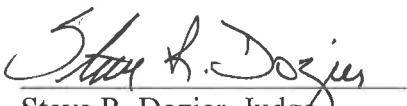
A writ of error coram nobis is noted as being:

[A]n "extraordinary procedural remedy," filling only a "slight gap into which few cases fall." *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999); *State v. Workman*, 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002). As previously noted by this Court, "the purpose of this remedy 'is to bring to the attention of the [trial] court some fact unknown to the court, which if known would have resulted in a different judgment.'" *State v. Hart*, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995) (quoting *State ex rel. Carlson v. State*, 407 S.W.2d 165, 167 (Tenn. 1996)).

Based upon the current filings of both parties, the State and defense counsel submit that evidence not previously presented to the jury or to the Court indicates another individual committed the murder of Leroy Owens. Obviously, the Court is not a party to this cause of action and must rely upon the State of Tennessee through the District Attorney General's office ("DA") to pursue valid charges and seek to uphold valid convictions. The current filing of the DA's office and statements of their representative in open court now indicate their belief the Petitioner is not guilty of the murder of Leroy Owens. This belief is based upon their investigation of evidence not previously presented to the jury trying the case nor to this Court. It is not the Court's role to investigate cases or present proof. The Court is here to do justice according to our state and federal constitutions and per our state laws. Justice in this case, based on the information presented to the Court, requires relief to the Petitioner.

The Court therefore grants the Petitioner's writ of error coram nobis and orders the Petitioner returned to the Davidson County Sheriff's custody for proceedings to resolve the murder charge against him.

Entered this 10th day of November, 2020.


Steve R. Dozier, Judge
Criminal Court, Division I

cc: Honorable Glenn Funk,
District Attorney General;
Honorable Sunny Eaton,
Assistant District Attorney General;
Honorable Daniel Horwitz,
Counsel for the Petitioner