IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
WESTERN SECTION, AT JACKSON

CARLOS STOKES,	§	
	§	
Petitioner-Appellant,	§	
	§	
v.	§	W2023-00421-CCA-R3-ECN
	§	
STATE OF TENNESSEE,	§	Shelby County Criminal Court
	§	Case No. 16-05861
Respondent-Appellee.	§	

PRINCIPAL BRIEF OF APPELLANT CARLOS STOKES

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2. Whether the trial court applied the correct legal standard for due process tolling when it failed to weigh, analyze, or mention either the State's interests or Mr. Stokes' interests.

3. Whether, in *sua sponte* denying Mr. Stokes' coram nobis petition without an evidentiary hearing, the trial court made material factual and legal errors when it: (a) found that the affidavit supporting Mr. Stokes' petition was unsworn (when it was sworn); (b) found that the affidavit supporting Mr. Stokes' petition was limited to recantation testimony (when it was not); (c) found that the affidavit supporting Mr. Stokes' petition was available and known to Mr. Stokes at the time of his trial (when it was executed three years later); (d) erroneously applied the post-hearing standard for granting a coram nobis petition (rather than the standard that determines whether to conduct an evidentiary hearing in the first place); and (e) explicitly punished Mr. Stokes with the loss of his right to maintain a coram nobis claim because he had exercised his Fifth Amendment right not to testify at his trial.

4. Whether Mr. Stokes was entitled to an evidentiary hearing on his coram nobis petition.

5. Whether this case should be reassigned on remand.

IV. STANDARDS OF REVIEW

1. "Whether due process principles require tolling the statute of limitations is a mixed question of law and fact and is reviewed de novo with no presumption of correctness." *Tucker v. State*, No. M2020-00810-CCA-R3-ECN, 2021 WL 3855859, at *3 (Tenn. Crim. App. Aug. 30, 2021).

2. To determine whether a petitioner has stated a cognizable claim for coram nobis relief, "the information contained in the affidavits" is "taken as true," and "if the affidavits are sufficient, and justify an evidentiary hearing, the trial court should not determine the merits of the petition on the strength of the affidavits alone." *State v. Hart*, 911 S.W.2d 371, 375 (Tenn. Crim. App. 1995).

3. Factual and legal errors made in the context of denying a coram nobis petition on its merits are reviewed for abuse of discretion. *See Jackson v. State*, No. M2012-01063-CCA-R3-CO, 2012 WL 6694089, at *3 (Tenn. Crim. App. Dec. 26, 2012) (citing *State v. Workman*, 111 S.W.3d 10, 18 (Tenn. Crim. App. 2002)). A trial court abuses its discretion "when it applies an incorrect legal standard, when its decision is illogical or unreasonable, when its decision is based on a clearly erroneous assessment of the evidence, or when it utilizes reasoning that results in an injustice to the complaining party." *Id.*

4. Whether a defendant has been unlawfully punished for exercising his Fifth Amendment rights is an issue of "constitutional law" that this Court "reviews de novo with no presumption of correctness accorded to the trial court's conclusions." *Bredesen v. Tennessee Jud. Selection Comm'n*, 214 S.W.3d 419, 424 (Tenn. 2007).

5. Whether to order reassignment on remand is a matter entrusted to this Court's "'inherent power to administer the system of appeals and remand.'" *Culbertson v. Culbertson*, 455 S.W.3d 107, 158 (Tenn. Ct. App. 2014) (quoting 5 Am.Jur.2d Appellate Review § 754 (2007)). "Some factors to be considered by an appellate court in deciding whether to exercise its supervisory authority to reassign a case are: (1) whether on remand the trial judge can be expected to follow the dictates of the appellate court; (2) whether reassignment is advisable to maintain the appearance of justice; (3) whether reassignment risks undue waste and duplication." *Id.*

V. INTRODUCTION

This is a serious actual innocence case that arises from the murder of Kristan Williams, a seven-year-old child. On January 11, 2021, Theodis "Big Nunu" Turner recanted—under oath—his previous testimony against Carlos Stokes,[1] one of several defendants who was convicted of murdering Ms. Williams. In his sworn affidavit, Mr. Turner also disclosed that police had threatened to charge Mr. Turner if he did not falsely inculpate Mr. Stokes.[2] Mr. Turner further attested that "[w]hat the police wanted me to say was written down for me" and that he had "agreed to sign a statement and testify to whatever the police wanted me to say in order to avoid being charged with conspiracy to commit murder."[3] In truth, though, Mr. Turner explained that "[c]ontrary to my testimony . . ., I have no personal knowledge that Carlos Stokes wanted, ordered, participated in, or had anything to do with the murder of Kristan Williams."[4]

Three weeks after receiving Mr. Turner's affidavit, Mr. Stokes petitioned for coram nobis relief based on Mr. Turner's recantation and the newly-discovered exonerating evidence and impeachment evidence that it contained.[5] Mr. Turner's earlier testimony against Mr. Stokes was also essential to Mr. Stokes' conviction, because the only other witness who inculpated Mr. Stokes at his trial was an accomplice under the

[1] Supp. R. at 2–3.
[2] Supp. R. at 2–3.
[3] Supp. R. 3 at ¶¶ 11, 10.
[4] Supp. R. 3 at ¶ 12.
[5] R. at 57–71; Supp. R. at 1–65.

State's theory of the case. *See State v. Clayton*, No. W2018-00386-CCA-R3-CD, 2019 WL 3453288, at *2 (Tenn. Crim. App. July 31, 2019) ("Carl Johnson testified for the State. He was indicted along with Defendants Clayton, Stokes, and Brookins but was not on trial.").

The trial court's contrary findings notwithstanding, Mr. Turner's affidavit was sworn, and its contents were not limited to a recantation. Despite containing a recantation, the affidavit was also "newly discovered evidence." *See State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999) ("We agree with the Court of Criminal Appeals that the trial court erred when it held, as a matter of law, that recanted testimony does not constitute newly discovered evidence."). Mr. Stokes could not reasonably have discovered Mr. Turner's recantation at the time of trial, either, since Mr. Turner did not recant until almost three years later. Nor could Mr. Stokes have known that police threatened Mr. Turner into testifying falsely, given that the State never disclosed that powerfully exculpatory evidence to Mr. Stokes in contravention of its *Brady* obligations.

Given these facts—and given that Mr. Stokes rapidly petitioned for coram nobis relief just three weeks after obtaining the newly discovered evidence at issue—Mr. Stokes was entitled to an evidentiary hearing on his coram nobis petition. The trial court's contrary judgment—which rests on several clear factual and legal errors as well as a finding that Mr. Stokes should be punished with the loss of his right to maintain a coram nobis claim because he did not testify at trial—is unsupportable.

Given these circumstances, the trial court erred by summarily dismissing Mr. Stokes' coram nobis petition without holding an evidentiary hearing. As a result, the trial court's judgment should be

reversed, and this case should be remanded with instructions to hold an evidentiary hearing on Mr. Stokes' coram nobis petition. For a host of reasons—including that Mr. Stokes cannot reasonably expect a fair trial from a judge who will punish him for exercising his Fifth Amendment rights—this case should also be reassigned.

VI. STATEMENT OF THE CASE

Following a jury trial, Mr. Stokes and two co-defendants were convicted of first-degree murder, conspiracy to commit first degree murder, attempt to commit first degree murder, employing a firearm during the commission of a dangerous felony, and reckless endangerment regarding a drive-by shooting of Kristan Williams. *See Clayton*, 2019 WL 3453288, at *6. Mr. Stokes' conviction became final in the trial court on February 9, 2018.[6]

On January 11, 2021, Theodis Turner—whose testimony at Mr. Stokes' preliminary hearing was essential to Mr. Stokes' conviction—executed a sworn affidavit that recanted his earlier testimony and powerfully exculpated Mr. Stokes.[7] Three weeks later—on February 2, 2021 (really February 1st, though the clerk did not file it until February 2nd)—Mr. Stokes petitioned for a writ of error coram nobis based on Mr. Theodis's affidavit and additional evidence corroborating it.[8]

On October 19, 2022, following a scheduling dispute with then-Judge Lammey that resulted in this Court granting Mr. Stokes

[6] R. at 6.
[7] Supp. R. at 2–3.
[8] R. at 57–71; Supp. R. at 1–65. Mr. Stokes notes that the certificate of service was February 1, 2021. *See* R. at 71.

extraordinary relief, *see* Aug. 18, 2023 Order, Case No. W2022-01049-CCA-R10-PC ("it is ORDERED that the Petitioner's application for extraordinary appeal is hereby GRANTED."), the trial court—Judge Addison now presiding—entered an order setting an "**October 31, 2022**" hearing on Mr. Stokes' coram nobis petition.[9] Mr. Stokes objected to that short-notice hearing date—which Judge Addison's order falsely stated was a "Defense request"[10]—because (among other things) the trial court would not reacquire jurisdiction over Mr. Stokes' claims until after this Court's mandate issued.[11] The trial court, through staff, then informed the Petitioner's counsel that because "the court does not have jurisdiction," "there will not be a hearing on October 31st."[12]

On October 31, 2022, Tennessee Supreme Court Chief Justice Roger A. Page entered an order designating and reassigning Judge Lammey to continue presiding over Mr. Stokes' case.[13] No one bothered to serve Mr. Stokes or his counsel with the order, though. Mr. Stokes then discovered the order months later and objected to it.[14] By order dated February 13, 2022, Chief Justice Page then entered an order "reassign[ing]" Mr. Stokes' case "to Judge Lammey's successor, Judge Carlyn Addison[.]"[15]

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[9] R. at 341.
[10] *Id.*
[11] R. at 342–51.
[12] R. at 394.
[13] R. at 397.
[14] R. at 400 ("Mr. Stokes now has objected to retired Judge Lammey continuing to hear this case.").
[15] *Id.*

On January 27, 2023, the Parties reached an agreement that Mr. Stokes' proceedings should be stayed until the newly-formed Shelby County Justice Review Unit—which investigates wrongful convictions—completed its review of Mr. Stokes' case,[16] which it had begun back on December 20, 2022.[17] The Justice Review Unit indicated that it would "rely on [the Parties] to get the order entered with Judge Addison."[18] On January 30, 2023, the State's counsel—Cavett Ostner—then promised to "address [the] Judge and get it reset."[19]

Mr. Ostner then did address the Court. Judge Addison apparently communicated that she might not be inclined to accept the Parties' scheduling agreement, though.[20] That fact was not shared with the Petitioner or his counsel—who were not present for the communication[21]—until several weeks later.[22]

On February 24, after learning of the conversation between the State and Judge Addison, the Petitioner's counsel expressed to the Court his "concern[s] about the ex parte conversation between the Court and the State that took place, in which the State was apparently aware that the Court might not accept our agreement to stay this matter, but we were not apprised of that fact."[23] With the agreement of the State, Mr.

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[16] R. at 415.
[17] R. at 412.
[18] R. at 415.
[19] R. at 417.
[20] R. at 422.
[21] *Id.*
[22] *Id.*
[23] *Id.*

Stokes also filed a consent motion to temporarily stay or continue his proceedings "pending the completion of review by the Shelby County Justice Review Unit."[24]

The same day, the trial court entered an order stating that "[t]his Court does not believe it appropriate to address the involvement, if any, of the newly formed Shelby County District Attorney General's Justice Review Unit regarding the Petitioner's case."[25] It also declined to stay Mr. Stokes' coram nobis proceedings and scheduled a March 2, 2023 status conference on Mr. Stokes' coram nobis petition.[26] On March 21, 2023, the Court then entered an order summarily dismissing Mr. Stokes' coram nobis petition without hearing.[27] This timely appeal followed.

VII. STATEMENT OF FACTS

"On April 10, 2015, seven-year-old Kristan Williams was shot and killed in a drive-by shooting while she was playing outside with her friends after school on Durby Circle in Memphis." *See Clayton*, 2019 WL 3453288, at *1. The evidence against Mr. Stokes' two co-defendants—Branden Brookins and Jordan Clayton—was strong. For instance, Mr. Brookins admitted to law enforcement "that he was in the vehicle seated behind the driver during the shooting." *Id.* at *4. As for Mr. Clayton, one witness testified that "she heard Defendant Clayton admit that 'he killed the little girl[,]'" *id.* at *3, and another "identified Defendant Clayton as the shooter in a photographic lineup and gave a statement to police." *Id.*

[24] R. at 402–03.
[25] R. at 432.
[26] *Id.*
[27] R. at 433–37.

at *4. Further, "[c]ell phone data showed that Defendant Clayton was most likely in the area of Durby Circle at the time of the shooting." *Id.* at *16. GPS location data confirmed that Carl Johnson—who was indicted but was not tried after he agreed to testify for the State—was present for the shooting as well. *See id.* at *6 ("a GPS monitoring device worn by Mr. Johnson placed him at Durby Circle at the time of the shooting.").

By contrast, the evidence against Mr. Stokes was minimal and subject to enormous concerns about reliability from the outset. The State's theory of Mr. Stokes' involvement was also outlandish. In particular, the State asserted that Mr. Stokes wanted a "body for a body" and ordered the murder of *a completely random, uninvolved child* "in retaliation for the murder of [his] sister earlier that day." *See id.* at *16.

To support its spectacular theory of Mr. Stokes' guilt, the State offered the combined testimony of two witnesses.

First, Carl Johnson—an indicted co-conspirator and admitted participant in Ms. Williams' murder who: (1) testified for the State "in the hope that he would receive leniency[,]" *id.* at *2; (2) "told authorities several versions of the activity of the Defendants prior to the victim's death[,]" *id.*; and (3) admittedly "gave several statements to authorities that were replete with lies[,]" *id.* at *3—testified that, prior to Ms. Williams' murder, Mr. Stokes had "started talking about his little sister being killed and that he wanted a 'body for a body.'" *Id.* at *3.

Second, a witness named Theodis "Big Nunu" Turner testified against Mr. Stokes at Mr. Stokes' preliminary hearing. At Mr. Stokes'

preliminary hearing, Mr. Turner testified that he heard Mr. Stokes say he:

> [W]anted a 'body for a body':
>
> > [b]ecause he fel[t] that [Defendant Clayton] was responsible for his sister getting kill[ed] ... because [Defendant Clayton] shot somebody the night before and they thought that [Defendant Clayton] lived at Carlos['s] house, because the same guy [Defendant Clayton] shot robbed [Defendant Clayton] some months back at Carlos['s] house.

Id. at *5.

At Mr. Stokes' actual trial, though, Mr. Turner testified that he "didn't remember anything about this case," that he had been "heavily on drugs" during Mr. Stokes' preliminary hearing, and that he "had no memory of his prior testimony." *Id.* at *10. Thus, Mr. Turner's preliminary hearing testimony was admitted against Mr. Stokes on the ground that Mr. Turner was "unavailable" at Mr. Stokes' trial. *Id.* at *11. The admission of Mr. Turner's preliminary hearing testimony due to his unavailability—which benefited the State at Mr. Stokes' severe expense—was also essential to Mr. Stokes' conviction, because "[i]n Tennessee, a conviction may not be based solely upon the uncorroborated testimony of an accomplice." *State v. Shaw*, 37 S.W.3d 900, 903 (Tenn. 2001).

Years later, Mr. Stokes retained counsel to investigate his claims of actual innocence. That investigation proved fruitful. At this point, every major participant in Mr. Stokes' trial—including both of Mr. Stokes' co-defendants (Jordan Clayton and Branden Brookins); the State's indicted trial witness (Carl Johnson); and Mr. Turner himself—all maintain that

Mr. Stokes was not involved.[28]

Mr. Turner, for his part, recanted his testimony in a sworn January 11, 2021 affidavit.[29] In full and verbatim, Mr. Turner's sworn affidavit attests as follows:

> 1. My name is Theodis Turner, I have personal knowledge of the facts affirmed in this Affidavit, I am competent to testify regarding them, and I swear under penalty of perjury that they are true.
>
> 2. I testified during the preliminary hearing in Shelby County Criminal Court Case No. 16-05861.
>
> 3. During my testimony, I indicated that I heard Carlos Stokes say he wanted a "body for a body" because he felt that Jordan Clayton was responsible for his sister getting killed.
>
> 4. In truth, Carlos Stokes did not say that he wanted a "body for a body." That testimony was false. I did not hear Carlos Stokes say anything like that.
>
> 5. The police came to my house after the defendants in Case No. 16-05861 were arrested. At that time, the police accused me of lying to them and insisted that I knew something.
>
> 6. The police scared me into testifying that I heard Carlos Stokes say he wanted a body for a body.
>
> 7. The police told me that I would be charged with conspiracy to commit murder if I did not sign a statement indicating that Carlos Stokes wanted a "body for a body."
>
> 8. I believed that I would be charged with conspiracy if I did not say what the police wanted me to say.
>
> 9. I still remember the specific floor where the police

[28] R. 158–59; *id.* at 194; *id.* at 232–33; *id.* at 253–54.
[29] Supp. R. at 2–3.

took me to sign a statement. They left me in a room by myself, threatened to charge me with conspiracy if I did not say what they wanted, and did not read me my rights.

10. I agreed to sign a statement and testify to whatever the police wanted me to say in order to avoid being charged with conspiracy to commit murder.

11. What the police wanted me to say was written down for me.

12. I ultimately testified at the trial in Case No. 16-05861 that I did not remember any details of what had occurred. I do.

13. Contrary to my testimony at the preliminary hearing in Case No. 16-05861, I have no personal knowledge that Carlos Stokes wanted, ordered, participated in, or had anything to do with the murder of Kristan Williams.[30]

In unsworn statements to investigators, the other participants in Mr. Stokes' trial recount Mr. Stokes' innocence, too. Mr. Johnson has fully recanted his trial testimony as it concerns Mr. Stokes.[31] Branden Brookins similarly asserts that Mr. Stokes was in no way involved in the crime and is "innocent."[32] Jordan Clayton says the same.[33]

Based on the newly-discovered evidence generated by his counsel's investigation—including Mr. Turner's sworn affidavit and additional

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[30] Supp. R. at 2–3.
[31] *Id.* at 56:19–58:10; *id.* 48:24–25.
[32] Supp R. at 21:20–22 ("[Investigator]: Well, first of all, on the day that this happened, was Carlos with you? [Brookins]: Nah, he wasn't."); *id.* at 25:15–16 ([Investigator]: "Stokes wasn't even there?" [Brookins]: "No. That's what I said."); *id.* at 28:18–20 ("I can't live my life knowing somebody else is incarcerated and I'm the one – the reason he [is] incarcerated."); *id.* at 29:14 ("Carlos . . . I know he innocent").
[33] R. at 253:23–254:16; *id.* at 271:15–16.

statements provided by other witnesses corroborating Mr. Turner's account—Mr. Stokes petitioned for coram nobis relief three weeks after obtaining Mr. Turner's affidavit.[34] By order dated October 19, 2022, Judge Addison ordered that Mr. Stokes' coram nobis petition be set for hearing.[35] Shortly after Mr. Stokes' counsel expressed concerns about an "ex parte conversation between the Court and the State that took place,"[36] though, Judge Addison changed course and summarily dismissed Mr. Stokes' coram nobis petition without hearing.[37]

Even more bizarre than the chronology of the trial court's decision was its reasoning. The trial court's order references "recent unsworn affidavits[,]"[38] though the only affidavit filed in support of Mr. Stokes' petition was Mr. Turner's, and Mr. Turner's affidavit was sworn.[39] The trial court's order also states that "the affidavits submitted by the Petitioner, alleged to be newly discovered, were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's guilty verdict[,]"[40] though again, there was only one affidavit, and it was not available until some three years later.[41] The trial court's order further asserts that the only "grounds for relief" asserted were "recantation of witnesses' previously sworn testimony[,]"[42] though Mr.

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[34] R. at 57–71; Supp. R. at 2–65.
[35] R. at 341.
[36] *Id*. at 420.
[37] *Id*. at 433–37.
[38] *Id*. at 435.
[39] Supp. R. at 2–3.
[40] R. at 436.
[41] Supp. R. at 2–3.
[42] R. at 434.

Stokes' petition was based on much more than that.[43] After misapplying the relevant legal standards for both tolling and whether a hearing should be held, the trial court's order then concludes with a finding that Mr. Stokes "is not without fault" in presenting his newly discovered evidence because he "would have known that he was not present" and "had the absolute right to testify at his trial" but "did not."[44]

The trial court's order suffers from material omissions, too. For instance, it does not address or even acknowledge Mr. Turner's statements that police threatened him into falsely inculpating Mr. Stokes.[45] Mr. Stokes, for his part, also had no way of knowing about those illicit threats until Mr. Turner disclosed them, because the State never disclosed its coercion in accordance with its *Brady* obligations. Thus, believing that he is entitled to an evidentiary hearing on his coram nobis claims, Mr. Stokes timely appealed.

VIII. ARGUMENT

A. THE TRIAL COURT FAILED TO APPLY THE CORRECT STANDARD FOR DUE PROCESS TOLLING, AND M. STOKES WAS ENTITLED TO DUE PROCESS TOLLING OF THE CORAM NOBIS STATUTE OF LIMITATIONS.

The statutory writ of error coram nobis permits a trial court "to reopen and correct its judgment upon discovery of a substantial factual error not appearing in the record which, if known at the time of judgment, would have prevented the judgment from being pronounced." *Mixon*, 983 S.W.2d at 667. Absent tolling, "[t]he writ of error coram nobis may be

[43] R. at 57–71; Supp. R. at 2–65
[44] R. at 436.
[45] *Compare id.* at 433–37, *with* Supp. R. at 2–3.

had within one (1) year after the judgment becomes final . . . ." Tenn. Code Ann. § 27-7-103. "Clearly, in a variety of contexts, due process may require tolling of an applicable statute of limitations[,]" though. *See Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001).

Among those contexts are situations when the basis for a petitioner's claim "arise[s] after the statute of limitations has expired." *Cf. Whitehead v. State*, 402 S.W.3d 615, 623 (Tenn. 2013) ("To date, this Court has identified three circumstances in which due process requires tolling the post-conviction statute of limitations. The first circumstance involves claims for relief that arise after the statute of limitations has expired."). The reason for the rule is that, "before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided" a meaningful opportunity to assert their claims. *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992). Thus, when a coram nobis claim is based on newly discovered evidence, due process considerations often require tolling of the coram nobis statute of limitations, because a coram nobis petitioner must "be afforded a 'reasonable opportunity after the expiration of the limitations period to present his claim in a meaningful time and manner.'" *Workman*, 41 S.W.3d at 103 (quoting *Williams v. State*, 44 S.W.3d 464, 471 (Tenn. 2001)).

Applying this standard, the Tennessee Supreme Court has held that a "petition for writ of error coram nobis [that] was filed approximately thirteen months after discovery of the evidence at issue" did not "exceed the reasonable opportunity afforded by due process." *Id.*

Given that backdrop, it is hard to imagine how the *three-week* period between Mr. Turner executing his affidavit and Mr. Stokes filing his coram nobis petition based on it could be considered unreasonable,[46] particularly when other features of Mr. Stokes' coram nobis claim are more favorable than *Workman*, too.

To determine whether tolling applies, a trial court is supposed to consider "the governmental interests involved and the private interests affected by the official action." *Id.* In its order summarily denying Mr. Stokes' petition, though, the trial court did not weigh, analyze, or mention either the government's interests *or* Mr. Stokes' interests.[47] That error—a failure to apply the correct legal standard—was necessarily an abuse of discretion. *See Harris v. State*, No. W2014-01020-CCA-R3-ECN, 2015 WL 226091, at *1 (Tenn. Crim. App. Jan. 16, 2015) ("A trial court abuses its discretion when it applies incorrect legal standards"). The error was also especially pronounced here, given that—in this unusually strong actual innocence case—the State's interests and Mr. Stokes' interests were *aligned*, at least at the case's current posture.

Had the trial court applied the correct analysis, it would have looked much like *Workman*'s. Typically, "the governmental interest in asserting the statute of limitations is the prevention of stale and groundless claims." *Workman*, 41 S.W.3d at 103. The State declined to assert that interest here, though, given its interest in reinvestigating Mr. Stokes' actual innocence claims before they proceeded to hearing. *See* R.

[46] Supp. R. at 2–3; R. at 57–71.
[47] R. at 433–37.

at 403 ("following a collaborative discussion with the District Attorney's Office and its JRU, the Parties agreed that this matter should be stayed until the JRU completes its review."); *see also id.* at 412; *see also id.* at 415*, id.* at 417.

Had the State's typical interest in preventing stale and groundless claims been asserted, however, the trial court would have been required to weigh that interest against Mr. Stokes' interest in "a hearing on the grounds of newly discovered evidence which may have resulted in a different verdict if heard by the jury at trial." *Workman*, 41 S.W.3d at 103. And although—unlike Mr. Workman—Mr. Stokes does not risk being "put to death without being given any opportunity to have the merits of his claim evaluated by a court of this State[,]" *see id.*, the life-plus sentence that Mr. Stokes faces is only the next step down in severity. As a result, Mr. Stokes' claim "warrant[s] similar treatment for purposes of due process analysis." *See State v. Ratliff*, 71 S.W.3d 291, 297 (Tenn. Crim. App. 2001) ("Contrary to *Workman*, Defendant's case does not involve a capital offense. Yet a sentence of twenty-four years, without eligibility for release, is a sufficiently significant period of time to warrant similar treatment for purposes of due process analysis.").

Given the circumstances presented, after applying the correct legal standard and "[w]eighing these competing interests in the context of this case," this Court should "have no hesitation in concluding that due process precludes application of the statute of limitations to bar consideration of the writ of error coram nobis[.]" *Workman*, 41 S.W.3d at 103. Indeed, the question of whether tolling applies here is considerably

easier than the tolling question presented in *Workman* for at least three reasons.

First, after obtaining a sworn recantation and powerfully exculpatory *Brady* evidence, Mr. Stokes filed his coram nobis petition rapidly—just three weeks after obtaining Mr. Turner's affidavit[48]—rather than waiting "thirteen months after discovery of the evidence at issue" to present it. *Id.* Thus, Mr. Stokes beat Mr. Workman to court by more than a year.

Second, unlike in *Workman*, the evidence that Mr. Stokes presented is new enough—and the three-year period between trial and Mr. Stokes' presentation of it was short enough—that the evidence cannot reasonably be described as "stale." *Cf. Sample v. State*, 82 S.W.3d 267, 282 (Tenn. 2002) (Barker, J., concurring in part and dissenting in part) (remarking on Mr. Workman's long "delay in *obtaining* the evidence" as well as "his lengthy delay in bringing the evidence to the attention of a court" after obtaining it). To illustrate the point: Tennessee's Post-Conviction Procedure Act used to have a standard "three-year statute of limitations" period. *Burford*, 845 S.W.2d at 208. The State also used to take the position "that a judgment does not become final for purposes of [the coram nobis] statute until the conclusion of the appeal as of right proceedings[,]" which commonly take years to unfold. *See Mixon*, 983 S.W.2d at 669. Thus, a three-year period between trial and the presentation of new evidence tracks recent Tennessee public policy and a coram nobis timeline that the State once *wanted*.

[48] Supp. R. at 57–71.

Third, unlike in *Workman*, the State did not even assert its typical interest in "the prevention of stale and groundless claims" below, *see Workman*, 41 S.W.3d at 103, given that the State agreed that Mr. Stokes' claims should be stayed until an innocence review could be completed.[49] As this Court has noted, the State's position that a petitioner's coram nobis claims merit investigation is also a meaningful consideration. *See Clardy v. State*, No. M2021-00566-CCA-R3-ECN, 2022 WL 2679026, at *7 (Tenn. Crim. App. July 12, 2022), *appeal granted*, No. M2021-00566-SC-R11-ECN, 2022 WL 17958607 (Tenn. Dec. 19, 2022) (emphasizing that "[a]s the State claimed before the coram nobis court below, an adequate investigation into whether the Colliers were present at the Clouatre shooting and whether the Petitioner was with them is important to serve the ends of justice.").

On par with *Workman*, Mr. Stokes has also "raised serious questions" about his guilt and the integrity of his conviction. *Workman*, 41 S.W.3d at 103. The State's case against Mr. Stokes—which was already weak to begin with—has collapsed at this point, and Mr. Turner's testimony was essential to it. Moreover, Mr. Turner's account of being threatened by police into falsely inculpating Mr. Stokes—which, at minimum, was *Brady* evidence—was never disclosed to Mr. Stokes. Thus, the State was not in a position to assert that this illicitly withheld evidence should have been presented earlier, and (to its credit) it did not do so. *See Nunley v. State*, 552 S.W.3d 800, 820 n.15 (Tenn. 2018) ("As we have acknowledged, a coram nobis claimant may appropriately assert

[49] R. at 412.

that prosecutors withheld evidence (so-called '*Brady*' evidence) in order to explain why he was without fault in not presenting newly-discovered evidence at trial and/or to support a request for equitable tolling of the statute of limitations."). Thus, the fact that the new evidence Mr. Stokes has presented includes serious claims of law enforcement coercion is relevant to the inquiry, too. *Id.*; *cf. Whitehead*, 402 S.W.3d at 624 ("misconduct might also necessitate tolling the statute of limitations").

To its credit, the State did not contest the propriety of a hearing on Mr. Stokes' coram nobis petition below or seek its dismissal. To the contrary, as noted, the State considered Mr. Stokes' claims about the integrity of his conviction serious enough to warrant a pre-hearing investigation.[50] Thus, the State agreed to stay Mr. Stokes' proceedings until its (now underway and ongoing) innocence review could be completed.[51]

Acting strictly on its own, though, the trial court rejected the Parties' agreement and sua sponte dismissed Mr. Stokes' petition without considering Mr. Stokes' interests *or* the State's.[52] This was error. Mr. Stokes presented both newly-discovered recantation testimony proving Mr. Stokes' actual innocence and newly-discovered, explosive, and never-disclosed impeachment evidence that—if credited—would

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[50] R. at 412.

[51] R. at 415. The fact that the State knows—and has long acknowledged—that the investigation into Ms. Williams' homicide yielded at best incomplete accountability presumably factored into that decision. *See, e.g.,* R. at 87 (in which a District Attorney states that "everyone knew Durr was likely in the car").

[52] R. at 433–37.

have precluded Mr. Stokes' prosecution and would have affected the outcome of his trial regardless. Mr. Stokes also presented that newly discovered evidence mere weeks after obtaining a sworn affidavit from Mr. Turner that supported it. Under these circumstances, "due process precludes summary dismissal of [his coram nobis] claim based upon a statutory time bar." *See Workman*, 41 S.W.3d at 103; *see also Ratliff*, 71 S.W.3d at 297 ("due process precludes application of the statute of limitations to bar consideration of a petition for writ of error coram nobis in cases where the defendant's interest in obtaining a hearing to present newly discovered evidence, which may establish actual innocence, far outweighs any governmental interest in preventing the litigation of stale claims."). Thus, the trial court's contrary order—which failed to identify (much less apply) the correct legal standard—should be reversed.

B. THE TRIAL COURT'S ORDER DISMISSING MR. STOKES' PETITION IS LITTERED WITH FACTUAL AND LEGAL ERRORS.

The trial court's order sua sponte dismissing Mr. Stokes' petition is also littered with other errors, both factual and legal. All of them are material, too. The trial court's order must be reversed as a result.

1. Mr. Turner's affidavit was sworn.

The trial court's order references and then discounts the "unsworn affidavits" that support Mr. Stokes' coram nobis petition.[53] Only one affidavit—Mr. Turner's—was appended to Mr. Stokes' coram nobis petition, though.[54] Mr. Turner's affidavit was also sworn. *See* Supp. R. at 3 ("**Sworn to** and subscribed before me this the 11 day of Jan. 2021"

[53] R. at 435.
[54] Supp. R. at 2–3.

followed by notary execution) (emphasis added); Supp. R. at 2 ("My name is Theodis Turner, I have personal knowledge of the facts affirmed in this Affidavit, I am competent to testify regarding then, and **I swear under penalty of perjury that they are true.**") (emphasis added). Thus, the trial court's contrary findings that multiple affidavits were submitted and that none was sworn were not only clear factual errors; they give rise to reasonable concerns about whether—in its haste to deny Mr. Stokes relief after his counsel complained about an undisclosed ex parte communication—the trial court meaningfully reviewed the evidence supporting Mr. Stokes' petition at all.

The difference between a sworn statement by a recanting witness and an unsworn statement is also material. *See, e.g., Austin v. State*, No. W2005-02591-CCA-R3CO, 2006 WL 3626332, at *4 (Tenn. Crim. App. Dec. 13, 2006) (emphasizing that "the petitioner did not bolster his petition with any sworn statement of Mr. Blankenship; he merely alleged via a sworn statement from third parties that Mr. Blankenship, without the imprimatur of an oath, had disclaimed his sworn re-sentencing hearing testimony."). The trial court's erroneous rejection of Mr. Turner's affidavit as "unsworn" was thus material as well. *See id.* As a result, the trial court's factual error on the point requires reversal.

2. <u>Mr. Stokes' petition was not limited to Mr. Turner's recantation.</u>

Paragraph 4 of the trial court's order *sua sponte* dismissing Mr. Stokes' coram nobis petition states that: "The petitioner alleges the following as grounds for relief: recantation of witnesses' previously sworn

testimony."[55] Mr. Stokes' claims were not limited to recantation of Mr. Turner's testimony, though. Instead, as Mr. Stokes' petition and Mr. Turner's supporting affidavit stated unambiguously, Mr. Stokes' petition was *also* based on newly discovered evidence that Mr. Turner was threatened into testifying falsely. *See* R. at 64 ("Mr. Turner additionally states that he was threatened with prosecution if he did not say what detectives wanted him to say.") (citing Supp. R. at 2–3, ¶¶ 5–11). Mr. Stokes emphasized that the evidence—which should have been disclosed in accordance with the State's *Brady* obligations—had been withheld and was reliable, too. As one such indication, Mr. Turner's account explained an otherwise inexplicable statement in a law enforcement supplement report that referred to Mr. Turner as a "co-defendant[.]" *See* R. at 64 (noting that the "alleged threat against Mr. Turner—who was never arrested or indicted in connection with this matter—was never disclosed to the Petitioner prior to his trial or afterward" and was "supported by and appears to explain detectives' otherwise inexplicable reference to 'confront[ing] [Mr. Turner] with **co-defendant** statements' during an April 21, 2015 interview.") (citing Supp. R. at 6).

None of these facts receives any mention in the trial court's order, though.[56] Instead, the trial court's order reflects its misapprehension that Mr. Stokes' petition was based on "recantation of witnesses' previously sworn testimony" alone.[57] That, too, was clear error. Once more, it is also a factual error that gives rise to reasonable concerns about

[55] R. at 434.
[56] R. at 433–37.
[57] *Id.* at 434.

whether the trial court—in its haste to deny Mr. Stokes relief—ever meaningfully reviewed Mr. Stokes' petition or the underlying evidence supporting it.

3. Mr. Turner's affidavit was neither available nor known to Mr. Stokes at the time of trial or sentencing.

Without explanation, the trial court's order *sua sponte* dismissing Mr. Stokes' coram nobis petition also states that: "the affidavits submitted by the Petitioner, alleged to be newly discovered, were in fact available and known to all parties prior to Mr. Stokes' sentencing hearing following the jury's verdict."[58] Because only one affidavit (Mr. Turner's) was submitted, though—and because Mr. Turner's affidavit was not executed until about three years after Mr. Stokes' trial and sentencing—Mr. Stokes is at a loss to explain this finding. The finding is not only inaccurate, but impossible.

Nor would it be true to say that the evidence (if not the affidavit itself) was available at the time of Mr. Stokes' trial. For instance, never—at any time, including to date—did the State disclose that police officers threatened to charge Mr. Turner if he did not falsely inculpate Mr. Stokes, which is what Mr. Turner has attested occurred.[59] Mr. Turner also did not come forward with that evidence until November 2020[60]—he mentioned then that he was still scared of what the officers would do to him[61]—and he did not swear under oath that his account was true until

[58] R. at 436.
[59] Supp. R. at 2–3.
[60] R. at 166:2–23.
[61] *Id.* at 163:16–21.

January 11, 2021.[62] The trial court's contrary determination—which is unburdened by any citation to record evidence—is unsupportable as a result.

Further, even if the evidence could reasonably have been *discovered* at the time of Mr. Stokes' trial (and absent compliance with *Brady*, it could not have been), that does not necessarily mean it was *available*. *See Suttles v. State*, No. E2013-01016-CCA-R3-PD, 2014 WL 2902271, at *15 (Tenn. Crim. App. June 25, 2014) ("Generally, to qualify as newly discovered evidence, the evidence must not have been known to the defendant at the time of trial. . . . A narrow exception, however, exists where " 'although not newly discovered evidence, in the usual sense of the term,' " the " '*availability*' " of the evidence " 'is newly discovered.' ") (cleaned up). The evidence at issue here—in particular, Mr. Turner's statements that police threatened him into falsely inculpating Mr. Stokes and that, "[c]ontrary to [his] testimony at the preliminary hearing in Case No. 16-05861, [he has] no personal knowledge that Carlos Stokes wanted, ordered, participated in, or had anything to do with the murder of Kristan Williams"[63]—also was *not* available at Mr. Stokes' trial. To the contrary, at Mr. Stokes' trial, Mr. Turner was specifically declared unavailable. *See Clayton*, 2019 WL 3453288, at *11 ("The trial court determined that the recording was admissible because Mr. Turner was unavailable under Tennessee Rule of Evidence 804.").

It also appears clear now that Mr. Turner's unavailability had

[62] Supp. R. at 2–3.
[63] Supp. R. at 2–3.

nothing to do with claimed memory loss.[64] Instead, it had to do with his fear of what the police would do to him.[65] And although Mr. Turner is plainly still scared that "they're going to give me life" and of where he will "end up"[66] by testifying truthfully, changed factual circumstances have given him the courage to come forward. *Cf. Suttles*, 2014 WL 2902271, at *15 (noting that the exception for "previously unavailable evidence [that] became available following a change in factual circumstances" often "involve[s] testimony of a co-defendant or a witness who previously refused to testify by asserting the constitutional privilege against self-incrimination."). Mr. Stokes is entitled to an evidentiary hearing on his petition as a result.

4. The trial court erroneously applied the *post*-hearing standard for *granting* a coram nobis petition, rather than the standard that determines whether to conduct an evidentiary hearing.

In its order *sua sponte* dismissing Mr. Stokes' coram nobis petition without hearing, the trial court stated that:

> The most recent unsworn affidavits reflecting the "newly discovered evidence" submitted by others involved with successfully implicating the Petitioner, whether during the investigatory stages, the Preliminary hearing or the Jury trial, do not—*individually or collectively*—constitute credible newly discovered evidence for the purposes of Error Ceram Nobis relief. **Before granting coram nobis relief** the trial court must be "reasonably well satisfied with the veracity of the proffered evidence. State v. Vasques, 221 S.W. 3d 514, 527

[64] Supp. R. at 3, ¶ 12 ("I ultimately testified at the trial in Case No. 16-05861 that I did not remember any details of what had occurred. I do.").
[65] *Id.* at 2–3.
[66] R. at 163:18–21.

(Tenn. 2007). This court is not.[67]

At the present stage of this case, though, the issue was not whether Mr. Stokes should be "grant[ed] . . . coram nobis relief[.]"[68] Instead, the question was whether—taking the information in Mr. Turner's affidavit "as true"—Mr. Stokes was entitled to *an evidentiary hearing*. *See Hart*, 911 S.W.2d at 375. This Court's precedent also instructs that "if the affidavits are sufficient, and justify an evidentiary hearing, the trial court should not determine the merits of the petition on the strength of the affidavits alone." *See id.* (citing *Hicks v. State*, 571 S.W.2d 849, 852 (Tenn. Crim. App.), *cert. denied* (Tenn. 1978).

Put another way (as the Tennessee Supreme Court has): "coram nobis claims are not easily resolved on the face of the petition and often require a hearing." *Harris v. State*, 102 S.W.3d 587, 593 (Tenn. 2003), *overruled on other grounds by Nunley*, 552 S.W.3d 800. There is also a good reason why, which is that credibility determinations cannot be made based on affidavits. *See Austin*, 2006 WL 3626332, at *4 ("We acknowledge that, once a coram nobis petitioner alleges in his petition that the trial testimony was false and that the new statement is true and buttresses his petition with the witness' affidavit, a hearing may well be necessary to determine the issue because, without a hearing, the petitioner would have no opportunity to present the live testimony of the recanting witness so that the coram nobis court could fathom his or her credibility. Not even an affidavit of the recanting witness attached to the

[67] R. at 435–36 (bolded emphasis added).
[68] *Id.* at 435.

petition can convey the permutations of credibility, such as demeanor, that live testimony conveys."). "Thus," this Court has explained, "when a petition makes such a claim of a witness' recantation, which, if true, could result in coram nobis relief, the petitioner may well be entitled to an opportunity to prove his allegations." *Id.* at *4. That is the situation here.

It is true that, under some circumstances, a trial court may dismiss a coram nobis petition without hearing based on the inherent inadequacy of the new evidence or its conclusion that the new evidence would not have affected the outcome of a petitioner's trial. *Id.* Thus, this Court has approved of pre-hearing dismissal when a witness's recantation was unsworn, *see id.* ("we note that the petitioner did not bolster his petition with any sworn statement of Mr. Blankenship; he merely alleged via a sworn statement from third parties that Mr. Blankenship, without the imprimatur of an oath, had disclaimed his sworn re-sentencing hearing testimony."); when "the record [was] devoid of any claim of corroboration that [the witness's] recantation [was] truthful[,]" *see id.*; and when the witness's "different testimony . . . would not have affected" the outcome of a petitioner's trial. *See id.*; *see also Juan v. State*, No. E2010-02147-CCA-R3-CD, 2011 WL 2693535, at *6–*7 (Tenn. Crim. App. July 12, 2011) ("While we acknowledge that our supreme court has said, 'Unlike motions to reopen, coram nobis claims are not easily resolved on the face of the petition and often require a hearing,' . . . [t]he error coram nobis court did not err when it concluded that, even if Guillermo Juan's purported letter and affidavit are taken as true, they do not present any new evidence that may have led to a different result at the Petitioner's

trial.").

None of these considerations is present here, though. As noted, Mr. Turner's affidavit was sworn.[69] His now-recanted preliminary hearing testimony and trial testimony were also essential to Mr. Stokes' convictions, and Mr. Stokes' convictions could not be sustained without that testimony. If presented at trial, the new evidence that police threatened Mr. Turner into falsely inculpating Mr. Stokes—by itself—would have changed the outcome of his case, too.

Mr. Stokes also presented evidence corroborating both Mr. Turner's claim that he never heard Mr. Stokes say he wanted "a body for a body" *and* Mr. Turner's claim that police threatened him into inculpating Mr. Stokes. As to Mr. Stokes' involvement: At this point, along with Mr. Turner, every other major participant in this case—including the person to whom the alleged "body for a body" statement was purportedly made—asserts that Mr. Stokes had nothing to do with Ms. Williams' homicide.[70] At Mr. Stokes' trial, the trial court itself also contemporaneously expressed *doubts* about the truth of Mr. Turner's testimony, rendering

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[69] Supp. R. at 3 ("Sworn to and subscribed before me this the 11 day of Jan. 2021" followed by notary execution); Supp. R. at 2 ("My name is Theodis Turner, I have personal knowledge of the facts affirmed in this Affidavit, I am competent to testify regarding then, and I swear under penalty of perjury that they are true.").

[70] Supp. R. at 56:19–58:10; *id.* 48:24–25; Supp R. at 21:20–22 ("[Investigator]: Well, first of all, on the day that this happened, was Carlos with you? [Brookins]: Nah, he wasn't."); *id.* at 25:15–16 ([Investigator]: "Stokes wasn't even there?" [Brookins]: "No. That's what I said."); 28:18–20 ("I can't live my life knowing somebody else is incarcerated and I'm the one -- the reason he [is] incarcerated."); *id.* at 29:14 ("Carlos . . . I know he innocent"); R. at 253:23–254:16; 271:15–16.

that adverse testimony dubious to begin with. *See Clayton*, 2019 WL 3453288, at *11 ("The trial court, by observation of the witness, commented that it appeared Mr. Turner just did not want to testify. The trial court did not 'necessarily believe he doesn't remember' but acknowledged that the witness's credibility was a jury question."). The additional fact that the State's theory of Mr. Stokes' guilt—specifically, that Mr. Stokes ordered the murder of a completely random, uninvolved child in retaliation for the murder of his sister the day before—intuitively makes no sense and is too spectacular to be plausible should be considered relevant here, too.

Similarly, as to Mr. Turner's claim that police threatened to charge him: The record corroborates that, too. When Mr. Turner was first interviewed by detectives, he did not inculpate Mr. Stokes or make the "body for a body" claim that produced Mr. Stokes' conviction.[71] Instead, according to law enforcement, Mr. Turner only made that "typed" statement after "[i]nvestigators confronted him with co-defendant statements[.]"[72] Because Mr. Turner has never been a co-defendant, though, law enforcement's supplement report to that effect has never made sense.

Until now. Based on the complete context presented by Mr. Turner, it is now clear that law enforcement not only *thought of* Mr. Turner as a "co-defendant" in Ms. Williams' homicide;[73] investigators also explicitly

[71] Supp. R. at 6.
[72] *Id.*
[73] *Id.*

threatened to make him one if he did not inculpate Mr. Stokes.[74] That threat worked, and it resulted in Mr. Turner signing a false "typed statement" inculpating Mr. Stokes that police prepared for him.[75] Thus, Mr. Turner's newly-presented evidence—which was not limited to recantation testimony—is corroborated by law enforcement's own supplement report that refers to Mr. Turner as a "co-defendant" and references the statement that police "typed" for him to sign as well.[76]

5. <u>The trial court erroneously punished Mr. Stokes for exercising his Fifth Amendment right not to testify at trial.</u>

"Recanted testimony may qualify as newly discovered evidence and justify the granting of a writ of error coram nobis." *See Cradic v. State*, No. E2016-01082-CCA-R3-ECN, 2017 WL 2304028, at *3 (Tenn. Crim. App. May 26, 2017) (citing *Mixon*, 983 S.W.2d at 672). Thus, a coram nobis petitioner has a right to present recanted testimony to support a coram nobis claim. *Id.* Further, if other criteria are established at an evidentiary hearing, a petitioner has a right to receive *relief* on his claim that includes "the granting of a writ of error coram nobis and a new trial[.]" *See id.*

Here, though, the trial court denied Mr. Stokes the right even to an evidentiary hearing because it determined that he was "not without

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[74] Supp. R. at 2–3.
[75] *Id.* at 6; *id.* at 2–3; *id.* at 3, ¶¶ 10–11 ("I agreed to sign a statement and testify to whatever the police wanted me to say in order to avoid being charged with conspiracy to commit murder. [] What the police wanted me to say was written down for me.").
[76] *Id.* at 6*; id.* at 2–3.

fault[.]"[77] As grounds, the trial court stated that Mr. Stokes was "the one person who would have absolutely known that he did not participate in the conspiracy to mete out revenge" as Mr. Turner originally testified, but that Mr. Stokes did not testify in support of his own innocence at trial. *See* R. at 436 ("If [Mr. Stokes] had not participated in any way, in any role, that led to the murder of Kristan Williams he had the absolute right to testify at his trial. He did not."). Thus, despite longstanding precedent permitting defendants to use recanted testimony to support a coram nobis claim, *Mixon*, 983 S.W.2d at 672 ("We agree with the Court of Criminal Appeals that the trial court erred when it held, as a matter of law, that recanted testimony does not constitute newly discovered evidence"), the trial court adopted an exception to that rule when a defendant has exercised his right not to testify at trial.

To understate the matter, the trial court's explicit punishment of Mr. Stokes for invoking his Fifth Amendment rights is troubling. "The Fifth Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment," and "Article I, section 9 of the Tennessee Constitution . . . guarantee criminal defendants the right to remain silent and the right not to testify at trial." *State v. Jackson*, 444 S.W.3d 554, 585 (Tenn. 2014). At trial, the State is also strictly forbidden from commenting on the defendant's choice not to testify, and juries are routinely instructed that a defendant "is not required to take the stand [on] her own behalf and her election not to do so cannot be considered for any purpose against her, nor can any inference be drawn

[77] R. at 436.

from such fact." *Id.* at 592, n. 51. Further, after trial, even a guilty defendant—including one who has pleaded guilty—may not be "punished . . . for exercising his Fifth Amendment right against self-incrimination." *United States v. Cabrera*, 811 F.3d 801, 808 (6th Cir. 2016).

Taken together, "[t]he Supreme Court has repeatedly held that the government 'may not impose substantial penalties' on an individual because they have exercised their Fifth Amendment rights." *United States v. Whitson*, No. 22-5462, 2023 WL 5124830, at *4 (6th Cir. Aug. 10, 2023) (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 805, 97 S.Ct. 2132, 53 L.Ed.2d 1 (1977), and citing *Garner v. United States*, 424 U.S. 648, 657, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976); *Minnesota v. Murphy*, 465 U.S. 420, 435, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984) ("[I]f the State, either expressly or by implication, asserts that the invocation of the [Fifth Amendment] privilege would lead to revocation of probation, it would have created the classic penalty situation.")). Thus, even comparatively trivial and *non*-criminal penalties—for instance, termination of employment—cannot be used to coerce a Fifth Amendment waiver. *See Lefkowitz*, 431 U.S. at 806 (discussing cases and holding that "government cannot penalize assertion of the constitutional privilege against compelled self-incrimination by imposing sanctions to compel testimony which has not been immunized.").

Given this context, the trial court's explicit decision to punish Mr. Stokes by depriving him of his right to present a well-supported coram nobis claim because he exercised his Fifth Amendment rights at trial was way over the line. No precedent permitted the trial court to impose such

a Fifth Amendment penalty, *see id.*, and the trial court's order does not purport to identify any.[78] Such a penalty would also be especially outrageous under the circumstances here, given that: (1) Mr. Turner says his false preliminary hearing testimony against Mr. Stokes resulted from never-disclosed police coercion;[79] (2) that testimony should never have been admitted at Mr. Stokes' trial if Mr. Turner's account is true; and (3) excluding the testimony would have resulted in a judgment of acquittal that never gave rise to Mr. Stokes' need or even *opportunity* to testify. The trial court's order punishing Mr. Stokes with the denial of his right to present a coram nobis claim because he exercised his Fifth Amendment rights at trial should be reversed accordingly.

C. THE TRIAL COURT ERRED BY DENYING MR. STOKES AN EVIDENTIARY HEARING.

"[C]oram nobis claims are not easily resolved on the face of the petition and often require a hearing." *Harris*, 102 S.W.3d at 593, *overruled on other grounds by Nunley*, 552 S.W.3d 800. Thus, if—"taken as true"—a petitioner's affidavits "are sufficient, and justify an evidentiary hearing, the trial court should not determine the merits of the petition on the strength of the affidavits alone." *See Hart*, 911 S.W.2d at 375 (citing *Hicks*, 571 S.W.2d at 852). As a result, an evidentiary hearing should be conducted when a petition recites:

> (a) the grounds and the nature of the newly discovered evidence; (b) why the admissibility of the newly discovered evidence may have resulted in a different judgment if the

[78] *See* R. at 436.

[79] Supp. R. at 2, ¶ 6 ("The police scared me into testifying that I heard Carlos Stokes say he wanted a body for a body.").

> evidence had been admitted at the previous trial; (c) that the Petitioner was without fault in failing to present the newly discovered evidence at the appropriate time; and (d) the relief sought.

Bland v. State, No. W2021-00897-CCA-R3-ECN, 2022 WL 1134769, at *4 (Tenn. Crim. App. Apr. 18, 2022), *appeal denied* (July 13, 2022) (citing *Hart*, 911 S.W.2d at 374–75). Further, "[a]ffidavits should be filed in support of the petition." *Id.* (citing *Hart*, 911 S.W.2d at 375).

Mr. Stokes did all of these things. His petition explains that it is "based upon newly discovered, non-scientific evidence relating to matters which were litigated at the Petitioner's trial and may have resulted in a different judgment had the evidence been presented at the Petitioner's trial."[80] It recites the testimony from Mr. Turner that was used to convict him, and it observes that Mr. Turner's testimony was essential to Mr. Stokes' conviction because it was necessary to corroborate Carl Johnson's accomplice testimony.[81] It details the facts of Mr. Turner's sworn recantation of his earlier testimony as well as the new, substantive, exonerating evidence and new impeachment evidence that Mr. Turner provided under oath.[82] It also appends extensive evidence corroborating Mr. Turner's affidavit, including detectives' supplement report referring to Mr. Turner as a "co-defendant"[83] and additional corroborating evidence of innocence from recorded interviews with Branden Brookins and Carl

[80] R. at 57.
[81] R. at 62–63.
[82] R. at 63–65.
[83] R. at 64 (citing Supp. R. at 6).

Johnson.[84] The facts of Mr. Turner's affidavit—recited verbatim in the body of Mr. Stokes' petition—detail why police misconduct prevented Mr. Stokes from discovering the evidence earlier, too.[85]

Mr. Stokes also explained that, "after discovering the evidence at issue, the Petitioner [] diligently brought the sworn, later-arising, and newly discovered evidence provided by witness Theodis Turner to this Court's attention within mere ***weeks*** of the evidence being obtained in admissible form."[86] He then compared those circumstances to a case that this Court had issued less than three months earlier, in which this Court had looked favorably on a petition that was filed "less than one year after discovering the new evidence." *See* R. at 69 (citing *Harbison v. State*, No. E2019-01683-CCA-R3-PC, 2020 WL 6747023, at *18 (Tenn. Crim. App. Nov. 17, 2020) ("Given that due process tolling was requested in the petition, we interpret the post-conviction court's statement that the victim's hearing testimony was timely as a finding that the grounds for the petition were later-arising and that the Petitioner exercised due diligence in pursuing his coram nobis claim by filing the petition less than one year after discovering the new evidence.")). Mr. Stokes' petition further noted that he had brought additional newly discovered evidence—evidence that both corroborated Mr. Turner's account and independently exculpated Mr. Stokes—to the Court's attention even *before* it could be obtained in admissible form.[87] And although Mr. Stokes

[84] R. at 65–68 (citing Supp. R. at 19–65).
[85] R. at 64–65.
[86] R. at 69.
[87] R. at 69.

originally intended to supplement his petition with additional evidence in admissible form once obtained, because the State later agreed that a hearing on his petition was necessary and because the Court *actually ordered one*, *see* R. at 341, supplementing Mr. Stokes' coram nobis petition to establish his entitlement to a hearing became unnecessary. Even so, the Petitioner notes that abundant further exonerating evidence—including further sworn evidence—was gathered through subsequent post-filing investigation to support Mr. Stokes' coram nobis claims, some (but not all) of which appears elsewhere in the record here.[88] The Shelby County Justice Review Unit's own review and investigation is also underway at this point as well.

Finally, as to the last requirement, Mr. Stokes' petition detailed the relief he sought. Specifically, it asserted that "this Court should issue a writ of error coram nobis and hold an evidentiary hearing on the Petitioner's Petition."[89] Thus, Mr. Stokes did everything required of him.

Under these circumstances, Mr. Stokes was entitled to an evidentiary hearing. The trial court's contrary judgment—which is plagued by a host of material factual and legal errors and also illicitly penalized Mr. Stokes with the loss of his coram nobis rights because he exercised his Fifth Amendment rights at trial—is unsustainable. *See supra* at 29–42. As a result, the trial court's judgment should be reversed, and this Court should remand with instructions to hold an evidentiary hearing on Mr. Stokes' petition.

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[88] *See, e.g.,* R. at 211–19; R. at 224–26; R. at 250–79; R. at 287–90; R. at 314–23; R. at 385:19–388:13.
[89] R. at 70.

D. THIS CASE SHOULD BE REASSIGNED TO A SPECIAL JUDGE ON REMAND.

With profound frustration, Mr. Stokes also asks that this Court reassign this case to a special judge on remand. The proceedings to date have made plain that the Shelby County Criminal Court will not give Mr. Stokes—who is actually innocent of a terrible crime for which he has been wrongly convicted—a fair shake.

The overt hostility of the Shelby County Criminal Court to Mr. Stokes' claims and its relentless mistreatment of Mr. Stokes to date cannot be overstated. This Court has already once had to grant Mr. Stokes extraordinary relief based on Judge Lammey's unreasonable and inflammatory misbehavior toward him. *See* Aug. 18, 2023 Order, Case No. W2022-01049-CCA-R10-PC ("it is ORDERED that the Petitioner's application for extraordinary appeal is hereby GRANTED."). After that, the Chief Justice found it necessary—possibly for the first time in Tennessee history—to rescind an order permitting Judge Lammey to continue to preside over Mr. Stokes' case and to appoint his successor, Judge Addison, to preside instead.[90] The record states that Judge Lammey "sufficiently advised" Judge Addison of the proceedings before she took over his case, though, and it also reflects that the first thing Judge Addison did in it was enter an order falsely stating that the defense "request[ed]" an evidentiary hearing on just 12 days' notice[91] when—in

[90] R. at 400 ("Mr. Stokes now has objected to retired Judge Lammey continuing to hear this case.").
[91] R. at 341.

truth—Mr. Stokes vigorously objected.[92]

After Judge Lammey was finally removed from Mr. Stokes' case, the next order that Judge Addison entered was one rejecting the Parties' joint request to stay Mr. Stokes' coram nobis proceedings[93] pending the Shelby County Justice Review Unit's reinvestigation of Mr. Stokes' innocence claims.[94] As grounds, Judge Addison simply stated that: "This Court does not believe it appropriate to address the involvement, if any, of the newly formed Shelby County District Attorney General's Justice Review Unit regarding the Petitioner's case."[95] The Parties' agreement was absolutely "appropriate" to consider, though, because judges are supposed to function as neutral arbiters, not interested advocates. As the Tennessee Supreme Court recently explained:

> The party-presentation principle helps preserve several fundamental values of our judicial system. It promotes impartiality by ensuring that courts retain the passive "role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008). A decision maker's passivity, or "detachment," helps to ensure even-handed adjudication and preserves litigant and public confidence in the impartiality of the judiciary.

State v. Bristol, 654 S.W.3d 917, 924 (Tenn. 2022).

The problems did not end there, either. Rather than being reduced to a timely written order, the Court's unwillingness to accept the Parties' agreement to stay Mr. Stokes' coram nobis proceedings was initially

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[92] R. at 342–50.
[93] R. at 402–03.
[94] R. at 432.
[95] *Id.*

communicated *ex parte* to the State.[96] That fact was never shared with the Petitioner or his counsel at the time or for several weeks afterward, though.[97] On February 24, 2023, after learning of the conversation, the Petitioner's counsel then expressed to the Court his "concern[s] about the ex parte conversation between the Court and the State that took place, in which the State was apparently aware that the Court might not accept our agreement to stay this matter, but we were not apprised of that fact."[98]

Mr. Stokes did not move to recuse at this point, hoping that he would still receive a fair hearing despite the many troubling issues that had preceded it. What followed next was the trial court's order sua sponte dismissing Mr. Stokes' petition, though—a ruling that came as a surprise given that Judge Addison *had already set a hearing on Mr. Stokes' coram nobis petition* just a few months earlier.[99]

Even that concerning chronology is something that Mr. Stokes could stomach, though, and it did not necessarily merit recusal. The contents of Judge Addison's *sua sponte* order, however, do. As noted above, the factual errors in the trial court's order—repeatedly referencing "affidavits," plural, when there was only one,[100] and discounting that

[96] R. at 422.
[97] *Id.* at 420.
[98] *Id.* at 422.
[99] *Id.* at 341.
[100] R. at 435 at ¶ 9; 435 at ¶ 10.

affidavit as "unsworn"[101] when it plainly was[102]—are concerning, and they could cause an objective observer to wonder, reasonably, whether the trial court ever meaningfully reviewed Mr. Stokes' petition before dismissing it. Sloppiness alone is not recusal-worthy, though. But expressly punishing Mr. Stokes with the loss of his right to a coram nobis evidentiary hearing because he exercised his Fifth Amendment rights is. *See* R. at 436 (writing that Mr. Stokes "is not without fault" because "had the absolutely right to testify at his trial" and "did not."). That punishment is also so thoroughly impermissible that no reasonable observer could expect Mr. Stokes to receive a fair hearing on remand or retrial, *especially* if he exercises his right not to testify.

Under these circumstances, reassignment "is advisable to maintain the appearance of justice[.]" *Culbertson*, 455 S.W.3d at 158. Thus, this Court should order reassignment under its "inherent power to administer the system of appeals and remand." *See, e.g., Rudd v. Rudd*, No. W2011-01007-COA-R3-CV, 2011 WL 6777030, at *7 (Tenn. Ct. App. Dec. 22, 2011) ("'An appellate court may ... order reassignment of a case to a different judge in the exercise of the court's inherent power to administer the system of appeals and remand.'") (quoting 5 Am.Jur.2d Appellate Review § 754 (2007)); *Biggs v. Town of Nolensville*, No. M2021-00397-COA-R3-CV, 2022 WL 41117, at *5 (Tenn. Ct. App. Jan. 5, 2022) ("Case

[101] R. at 435 at ¶ 9.

[102] Supp. R. at 3 ("Sworn to and subscribed before me this the 11 day of Jan. 2021" followed by notary execution); Supp. R. at 2 ("My name is Theodis Turner, I have personal knowledge of the facts affirmed in this Affidavit, I am competent to testify regarding then, and I swear under penalty of perjury that they are true.").

law reflects that this Court 'may ... order reassignment of a case to a different judge in the exercise of the court's inherent power to administer the system of appeals and remand.'") (quoting *Culbertson*, 455 S.W.3d at 157 (same)).

Regrettably, the last time that this case was reassigned, Judge Lammey "sufficiently advised" his successor about it, who then picked up mistreating Mr. Stokes where Judge Lammey left off.[103] Mr. Stokes should not have to face a series of judges who act unfairly toward him and then communicate with their replacements to ensure that the unfairness toward Mr. Stokes continues, though. Accordingly, to preserve the appearance of justice—and because it is clear at this point that Mr. Stokes will not receive fair treatment in the Shelby County judicial system, which has now repeatedly refused to accept even *agreed* scheduling proposals that are designed to facilitate meaningful review of his credible actual innocence claims[104]—this case should be reassigned to a special judge on remand. If that request seems extraordinary, Mr. Stokes submits that it should be considered in the context of the similarly extraordinary situation involved here: Mr. Stokes presenting an exceptionally strong claim of actual innocence concerning a heinous crime for which he will otherwise spend the rest of his life in prison, followed by two Shelby County Criminal Court judges mistreating Mr.

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[103] R. at 341.

[104] *Compare id.* at 402–03 *with id.* at 432; *also compare id.* at 82–102, *with id.* at 103–106 (rev'd, Aug. 18, 2023 Order, Case No. W2022-01049-CCA-R10-PC ("it is ORDERED that the Petitioner's application for extraordinary appeal is hereby GRANTED.").

Stokes and then *sua sponte* foreclosing relief despite the Shelby County District Attorney's Justice Review Unit itself requesting time to investigate the credible claims of innocence that Mr. Stokes has presented.

IX. CONCLUSION

For the foregoing reasons, the trial court's order dismissing Mr. Stokes' Petition for Writ of Error Coram Nobis should be reversed with instructions to hold an evidentiary hearing on his claims. On remand, Mr. Stokes' case should also be reassigned.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

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CERTIFICATE OF SERVICE

I certify that on this the 24th day of August, 2023, a copy of the foregoing was served via the Court's e-filing system, via email, or via USPS mail, postage prepaid, upon:

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