

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

FREDERICK BRAXTON )  
Petitioner, )  
V. )  
STATE OF TENNESSEE, )  
Respondent. )

FEB 06 2018  
*Deb L*

CASE NO. 2007-A-732  
(Error Coram Nobis)

**ORDER**

This cause came before the Court on January 5, 2018, for a hearing on the Petitioner's petition for writ of error coram nobis. On October 15, 2008, the Petitioner was convicted by a jury of attempted second degree murder. The Petitioner received a nineteen (19) year sentence to be served as a Range II offender. The Court denied the Petitioner's motion for a new trial on August 4, 2009. Subsequently, the Tennessee Court of Criminal Appeals affirmed the judgments of the Court. See State v. Braxton, 2011 WL 3809773 (Tenn. Crim. App. Aug. 26, 2011) perm. app. denied (Tenn. Jan. 10, 2012). No petition for post-conviction relief was ever filed. On November 13, 2017, the Petitioner, by and through counsel Gregory Smith, filed the instant petition. The Petitioner requests the Court set aside his conviction and dismiss the case with prejudice on the basis that the victim of the attempted murder, Mr. James Williams, has recanted his prior testimony implicating the Petitioner. The Court conducted the instant evidentiary hearing on January 5, 2018. At the conclusion of the hearing, the Court took the matter under advisement, and now issues this Order regarding the requested relief.

### *Testimony*

At the instant hearing, the Court first heard testimony from Mr. James Williams, the victim in the instant case. Mr. Williams testified as to the following: He contacted the family of the Petitioner around the beginning of October, 2017, and subsequently met with the Petitioner's attorney, Mr. Gregory Smith. He testified in the trial in this case that the Petitioner was the man who shot at him. However, he now recants that testimony, and states that the Petitioner was neither present nor involved in the shooting. He deliberately lied and said the Petitioner was one of the shooters because he was upset with the Petitioner and wanted the Petitioner to get in trouble. In 2010, he was convicted of a crime that he believed he should not have been convicted for, and started feeling bad about what he did to the Petitioner. He met with Mr. Smith about his recantation. At his request, Mr. Smith provided him with copies of statutes related to aggravated perjury and the statute of limitations for that offense. He believed the statute of limitations for aggravated perjury had expired. Mr. Smith was clear when he provided the statutes that he was not advising him about whether the statute of limitations actually had expired. He has not hired an attorney to represent him, and declined to continue the hearing to have the opportunity to consult with an attorney. He wished to testify about his false testimony at trial because he has experienced bad karma since the original trial in this case. Before making contact with the family in October of 2017, he had not told anyone he had lied about his testimony.

On cross-examination by Assistant District Attorney Wesley King on behalf of the State, Mr. Williams testified as to the following: His conviction in 2010 was out of Davidson County Criminal Court, Division V, before Judge Monte Watkins. He served four years of that sentence in the custody of the Tennessee Department of Correction before his release. He never encountered the Petitioner while incarcerated. He did encounter Mr. Leonard Harris, the co-

defendant in this case, once when they were both at the courthouse for court dates while he himself was incarcerated. This incident has been "eating [him] up" since the day the Petitioner was convicted. Later in the hearing, he stated he realized what he did was wrong after his conviction in 2010. He was arrested in that case after selling drugs to a confidential informant. He was upset because he felt like someone "snitched" on him in that case. That arrest led him to realize that he should not have testified falsely against the Petitioner. He has known the Petitioner since the 1990s. He and the Petitioner began to have conflict with each other in 2005. The Petitioner was angry with him because the Petitioner thought that he shot the Petitioner's brother. He did not shoot the Petitioner's brother, but the Petitioner thought he did. In the instant case, he was shot multiple times and suffered extensive injuries. The shooting took place on Dickerson Pike at approximately 5:00 P.M. It was still daylight when the incident occurred, and he got a good look at the two men who shot at him. He was driving down the street when the vehicle the shooters were in pulled up beside him from behind him and the two shooters opened fire. He was struck by six shots, and there were nineteen shots into the car. Mr. Harris was one of the shooters, but the other shooter was not the Petitioner. He knew who the other shooter was, but was "not at liberty" to say who he was. He had previously shot the other shooter. Since this incident, he has made peace with that individual, so he does not wish to implicate him in the shooting at this time. Before he made contact with the Petitioner's family about recanting, a cookout had taken place. He was not at the cookout because he was in prison at the time. His uncle was at the cookout, as were several members of the Petitioner's family. Someone at the cookout gave his uncle the phone number of one of the Petitioner's brothers (not the one the Petitioner believed he had shot) and indicated that the Petitioner's family wanted to talk to Mr. Williams. He knew that brother as "Lil' Roe." His uncle gave him that message to him after he

was released from prison. He had not told anyone that he had testified falsely against the Petitioner, but everyone in his community knew that he did. He thought his uncle gave him the message so that he could make peace with the Petitioner and the Petitioner's family. Based on his uncle giving him "Lil' Roe's" phone number, he called "Lil' Roe," and that ultimately led to him meeting with the Petitioner's attorney and recanting. He has wanted to recant since he was convicted in 2010, but did not do so until recently because of pride and where he was in his life. After he was shot, he was transported to Vanderbilt University Medical Center, and that was where he first spoke with the police. At first, he did not want to identify the shooters, because he wanted to take revenge himself. He told his mother that was why he would not identify the shooters. His mother urged him to not take matters into his own hands. After that conversation, he told the police Mr. Harris and the Petitioner were the men who shot him. The Petitioner bound over his case without a preliminary hearing. However, a preliminary hearing was conducted in Mr. Harris's case, and he testified under oath in that hearing. Everything he testified to in that hearing was true except for his identification of the Petitioner as one of the shooters. He identified the Petitioner as a shooter because he was upset with the Petitioner. He was upset with the Petitioner because he believed the Petitioner was responsible for his sister and her children being shot at when they were driving on the interstate. This case remained pending for two years before it went to trial. He remained in contact with General King and Ms. Cathy Harrison, the victim witness coordinator in the case, while the trial was pending. Mr. Harris tried to contact him while the case was pending and threatened him, but he still wanted to go to trial. He did not want to let Mr. Harris bully him into not testifying. He met with the prosecutors handling the case of his own volition, and he was never coerced or bullied into testifying. The only thing the prosecutors ever asked him to do was tell the truth. He had a prior criminal history at the time of

the trial, and he was open and honest about that. He testified at trial while under oath that the Petitioner was one of the individuals who shot him. He also never gave any indication that the Petitioner was not the shooter in the sentencing hearing, and asked for the Petitioner to receive the maximum sentence the Court could give him. He never testified on the Petitioner's behalf before a parole board or anything like that. When he met with the Petitioner's attorney in relation to the instant proceeding, he was initially concerned about the possibility he could be charged with perjury. After he saw the statutes Mr. Smith provided to him, he believed he was beyond the statute of limitations. He has an extensive criminal history. In addition to his conviction in 2010 in Division V, he has prior convictions for one aggravated burglary, two aggravated assaults, felony tampering with evidence, alteration of a serial number, unlawful possession of a weapon, and a number of lesser offenses. He received a call shortly before the instant hearing from another of the Petitioner's brothers, who he knows as "Big Roe," who wanted to make sure he was coming.

On re-direct examination, he testified to the following: He has not received any payment or inducement from the Petitioner or the Petitioner's family to testify. He lied when he identified the Petitioner in this case originally, but is telling the truth at this time.

#### *Analysis*

The statute that governs the writ of error coram nobis in Tennessee provides as follows:

Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it not been presented at the trial.

Tenn. Code Ann. § 40-26-105 (2010). The statute further provides that "[t]he relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or

could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding." Tenn. Code Ann. § 40-26-105 (2010). Tennessee courts have consistently recognized that the writ of error coram nobis "is an extraordinary procedural remedy... [that] fills only a slight gap into which few cases fall." State v. Mixon, 983 S.W.2d 661, 672 (1999).

While recanted testimony can qualify as "newly discovered evidence" that can form the basis of coram nobis relief, the trial court is only to grant relief on the basis of recanted testimony where:

(1) the trial court is reasonably well satisfied that the testimony given by the material witness was false and the new testimony is true; (2) the defendant was reasonably diligent in discovering the new evidence, or was surprised by the false testimony, or was unable to know of the falsity of the testimony until after the trial; and (3) the jury might have reached a different conclusion had the truth been told.

State v. Vasques, 221 S.W.3d 514, 525 (Tenn. 2007) (quoting State v. Mixon, 983 S.W.2d 661, 673 n.17 (Tenn. 1999)).

Turning to the matter at hand, while Mr. Williams' testimony would clearly satisfy the second and third elements of the test set forth in Vasques, the Court finds that it is not "reasonably well satisfied" by the truthfulness of Mr. Williams' recantation, as the Court is of the opinion that Mr. Williams' recantation is not credible.

First, the Court notes that Mr. Williams only came forward with his purported recantation after being contacted by the Petitioner's family. Additionally, the Court is concerned by Mr. Williams' narrative about when he realized he was wrong to have testified falsely against the

Petitioner. At one point in the hearing, Mr. Williams testified that he was "eaten up" by his false testimony as soon as the Petitioner was convicted. Yet, he also admitted that at the sentencing hearing, he still asked the Court to impose the maximum sentence it could upon the Petitioner. However, at another point in the hearing, Mr. Williams testified that he only truly realized his false testimony had been wrong when he himself was convicted in 2010. While the Court is concerned by these inconsistencies, the Court is even more concerned by the fact that it took the passage of at least seven additional years and the Petitioner's family contacting Mr. Williams before he came forward and recanted. Not only did Mr. Williams not formally recant until after the Petitioner's family had reached out, but he had never even admitted to anyone that he lied in the instant case. The Court also notes with suspicion that Mr. Williams appeared concerned about the statute of limitations for aggravated perjury, and made sure to check the limitations period himself before he agreed to testify.

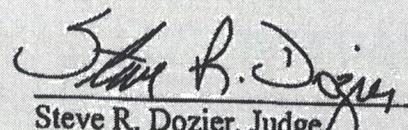
In addition to these concerns about the timing of Mr. Williams' recantation, the Court also notes that there is nothing surrounding the trial of the case that indicates Mr. Williams testified falsely at the time. Mr. Williams admitted that he was not pressured by the State to testify against the Petitioner and that the Petitioner had never threatened him (which could have steeled his resolve to testify against the Petitioner, as had occurred with the co-defendant, Mr. Harris). Further, Mr. Williams' testimony was corroborated by the testimony of another eyewitness as to the majority of the facts of the case except the identity of the shooters. While the Court recognizes that the fact Mr. Williams is the only witness who identified the Petitioner as one of the shooters is a key piece of the Petitioner's request, the Court is of the opinion that the fact that Mr. Williams' trial testimony was truthful in all other aspects weighs against his position now that he lied about the identity of the Petitioner.

Additionally, the Court also finds Mr. Williams' criminal record of crimes of dishonesty, weighs against his credibility.

Finally, and most critical to the Court's finding on Mr. Williams' credibility, is the fact that Mr. Williams refused to provide the name of the individual who actually shot him. The Court finds that Mr. Williams' explanation of why he could not identify the purported actual shooter—that he had made his peace with the purported actual shooter after Mr. Williams had shot the other individual, and the other individual shot Mr. Williams in this case—is simply not believable. Mr. Williams testified in several instances about his belief and desire, at least around the time of the shooting in this case, in retaliating on his own rather than involving law enforcement. He even admitted that he did not disclose the names of the shooters to the police at first because he planned to exact vengeance on his own. In light of this, the Court simply cannot accept that Mr. Williams went from planning to shoot the purported actual shooter to deciding to ignore that individual's actions and instead implicate the Petitioner in a situation in which the Petitioner was not even involved.

Accordingly, in light of the foregoing analysis, the Court is unable to find that it is "reasonably well satisfied" by the truthfulness of Mr. Williams recantation. Thus, the Court must hold that the Petitioner is not entitled to relief on his petition for a writ of error coram nobis, and the Petitioner's request is hereby denied.

Entered this 6<sup>±1</sup> day of February, 2018.

  
Steve R. Dozier, Judge  
Criminal Court, Division I

cc: Honorable Gregory Smith,  
Attorney for the Petitioner;  
Honorable J. Wesley King,  
Assistant District Attorney General.