

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
TWENTY-THIRD JUDICIAL DISTRICT
SECOND DIVISION

STATE OF ARKANSAS

PLAINTIFF

vs.

CR 97-9

HEATH STOCKS

DEFENDANT

**RESPONSE TO DEFENDANT'S REPLY TO THE STATE'S RESPONSE TO THE
MOTION OR APPOINTMENT OF COUNSEL**

Comes now the State, by and through Deputy Prosecuting Attorney Ben Hooper, and states the following as a response to the Defendant's Reply to the State's Response to the Motion of Counsel.

1. The Defendant has filed a petition for postconviction relief under error coram nobis. He subsequently filed a motion asking the Court to appoint counsel.
2. The State responded with an objection. The Defendant subsequently responded to the State's response by reasserting his request for counsel and moving that a specific attorney be appointed to him.
3. The State is only responding to this issue again because within his response the Defendant made a new request: that a specific attorney be appointed to represent him. However the State continues to object to the Defendant's request as the law has not changed on the subject and the Defendant's specific naming of an attorney does not effect the legal argument or analysis of the matter.
4. The Arkansas Supreme Court has continuously recognized that there is "no constitutional right to an attorney in state postconviction proceedings." *Viveros v. State*, 372 Ark.463 (2008). This is the case even when "an appellant is indigent and unskilled." *Id.*
5. *Viveros* does state that the Defendant is entitled to counsel postconviction if his petition makes a "substantial showing" that he is entitled to relief. In other words, if a Defendant's petition shows the possibility of merit and a hearing is required then counsel should be appointed. That is not the case here. As the State has shown in its response to the Defendant's requested relief, not only

has the Defendant failed to raise any claims that are cognizable under error coram nobis or audita querela, but he has failed to even raise those claims in a diligent manner. Either reason requires the dismissal of the defendant's petition and both are present in this case. As was the case in *Viveros*: "None of the appellant's claims in his motion amount to a showing of merit." *Id*

6. The Defendant, in his response to the State's response, did nothing to address this case law. Nor did he offer any case law or other legal authority to dispute it. That is because the law is well settled: the Defendant is simply not entitled to an attorney at this stage of the proceedings. Further, because of the already discussed facial deficiencies in the Defendant's petitions, a hearing can not be granted and there is therefore no need or legal grounds to appoint an attorney in that regard either.

Therefore, the State continues in its objection to the Defendant's request for appointment of counsel and asks that his request be denied.

Respectfully Submitted,



Ben Hooper
Deputy Prosecuting Attorney
301 North Center Street, St 301
Lonoke, Ar

CERTIFICATE OF SERVICE

I, Ben Hooper, Deputy Prosecuting Attorney, do hereby certify that a copy of the foregoing Response was mailed via first class mail to the Defendant at the following address on this 22 day of November, 2017.

Heath Stocks
ADC #110429
Maximum Security Unit
2501 State Farm Road
Tucker, Ar 72168-8713



Ben Hooper
Deputy Prosecuting Attorney