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**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 MOTION TO STRIKE THE STATE'S RESPONSE AND FOR DEFAULT JUDGMENT

Comes now the State, by and through Deputy Prosecuting Attorney Ben Hooper, and states the following as a response to the Defendant's Motion to Strike and for Default Judgement:

The Defendant's Claims

The Defendant is asking the Court to strike the State's previous response to his Petition for Error Coram Nobis and Audita Querela and grant him a hearing as a default judgement under Rule 15 and Rule 55 of the Arkansas Rules of *Civil* Procedure. The Defendant is essentially claiming that the State did not respond within the time strictures set for forth in Rule of *Civil* Procedure 15 and is therefore entitled to default judgement under Rule of *Civil* Procedure 55. The Defendant is precisely wrong as to his understanding of the law in this issue and, as such, his motion may be shortly and expeditiously disposed of.

Arkansas Law Refutes the Defendant's Claims

Arkansas law is clear on this issue and it is the exact opposite of what the Defendant claims. In fact, it was reaffirmed as recently as earlier this very month by the Arkansas Supreme Court: "[t]he Arkansas Rules of Civil Procedure have never been applied to postconviction proceedings . . . " *Darrough v State*, 2017 Ark. 314 (2017) (emphasis mine). The Court in *McArty v State* 364 Ark. 517 (2006) explained that this is because in a petition for post-conviction "the challenge is ultimately to the judgement of conviction, and a criminal matter." In fact, the case in *Darrough* addresses the exact issue presented by the Defendant. The defendant there was asking for a default judgement because the State failed to respond. If anything, the defendant in *Darrough* had a stronger case than the Defendant in this matter because *Darrough* involved a habeas petition, a matter which is explicitly civil in nature. And yet the Arkansas Supreme Court flatly refused to apply the Rules of Civil Procedure specifically in regards to the State's

response and the request for default judgement. In fact, the Court in *Darrough* noted that the State wasn't required to respond at all until the Defendant made an initial showing of probable cause. This is applicable to all postconviction relief matters - the State is not even required to respond unless the Court makes an initial finding of facial validity - that the petition alleges and supports cognizable claims - and sets the matter for a hearing. The Court has not done so in this case and nor would it be proper for it to do so as the State has previously and at length shown that the Defendant's petitions were not diligently submitted and did not contain cognizable claims. As the court in *Darrough* disposed of the issue: "[b]ecause the State was not required to file a return, the circuit court properly denied Darrough's request for a default judgement." *Id.* The State therefore was not required to reply to the Defendant at all, instead the State chose to respond both because of the serious nature of the crimes for which the Defendant was convicted and because of the baselessness of the claims he raised.

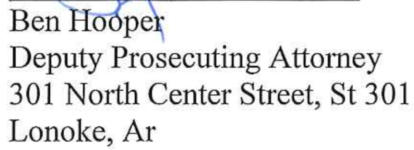
The reasoning behind this line of cases from the Supreme Court is clear and it makes perfect sense from a practical standpoint. Without this rule, for example, a Defendant could slowly and deliberately over a period of weeks and months craft a lengthy petition for post-conviction relief – say, 50 pages or more -, attach numerous documents – say, 500 pages or more – and then force the state to drop everything to research, prepare, and draft a response to this voluminous output within only twenty days. This would be obviously unfair and is not something the rules of actual *criminal* procedure or the Courts force upon the parties in post-conviction matters. The courts are clear: the rules of civil procedure simply do not apply to post-conviction proceedings. And as the *Darrough* opinion confirms: this applies specifically to the timeliness of state responses and default judgement

Conclusion

The Defendant gets the law exactly wrong. In fact, it is worth pointing out that all of the cases cited by the Defendant in his motion to strike are explicitly civil in nature. None of them deal with post-conviction relief matters such as error corma nobis or audita querela. And the reason for that is clear: because there is no basis in Arkansas case law whatsoever to apply the rules of civil procedure – including rules 15 and 55 – to post conviction relief cases. In fact, as the Court in Darrough noted, literally the opposite is true: "[t]he Arkansas Rules of Civil Procedure have never been applied to postconviction proceedings . . . " *Darrough v State*, 2017 Ark. 314 (2017).

The Defendant's motion to strike and request for default judgement is entirely contrary to Arkansas law and must therefore be denied.

Respectfully Submitted,



Ben Hooper
Deputy Prosecuting Attorney
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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 27 day of November, 2017.

Heath Stocks
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Ben Hooper
Deputy Prosecuting Attorney