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/PETITION FOR THE ISSUANCE OF A WRIT OF ERROR CORAM NOBISTO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER THE WRIT OF ERROR CORAM NOBIS

Comes now the State, by and through Deputy Prosecuting Attorney Ben Hooper, and states the following as a response to the Defendant's Motion/Petition concerning a writ of error coram nobis:

The Defendant has presented the Court with a Petition for writ of error coram nobis. He seeks relief in the form a hearing on the claims he presents. Broadly speaking, the Defendant is claiming support for his petition by alleging various *Brady* violations. He makes those allegations in ten separate claims. The State denies the totality off all claims made in the Defendant's Petition, and, more specifically, the State denies that the Defendant raises any meritorious or cognizable claims available under a petition for error coram nobis. Because none of the claims the Defendant raises have merit or are cognizable under the auspices of error coram nobis there is no need for a hearing to be held in this matter.

ERROR CORAM NOBIS IN GENERAL

Before rebutting the Defendant's claims, it is necessary to take a brief look at the law and standards regarding error coram nobis. This is especially the case as the Defendant's Petition runs afoul of much if it. The purpose of the writ is to secure relief from a judgement or conviction in the limited instances where a fact exists that would have prevented the rendition of the judgement "had it been known to the trial court and which, through no fault or negligence of the defendant, was not brought forward before the judgement." *Matthews v State*, 2016 Ark. 447 (2016). The law surrounding the writ limits the scope even further than that – that new fact or error must fall into one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime that came to light in between conviction and appeal. *Id at 2.*

All of the above, combined with the fact that error coram nobis proceedings come with a "strong presumption that the judgement of conviction is valid" *Id at 2*, means that it is an "extraordinarily rare remedy" that is "more known for its denial than its approval" *Millsap v State*, 2016 Ark. 391 (2016).

There is one further legal issue surround error coram nobis that should be discussed. The State will discuss it below in a more length because of both its importance in the case law and its relevance to the issue at hand – the matter of diligence. The Defendant must act with diligence – *i.e.* reasonable timeliness - in bringing the issues to the Court's attention via an error coram nobis petition. Diligence, as the State will show through case law, is a sort of threshold issue. If a Defendant does not act with diligence in bringing an error coram nobis petition before the court then the petition must be dismissed. Again, this is a threshold issue and applies even if the Defendant raises a claim that may fall under one of the four permissible categories. The Arkansas Supreme Court has repeatedly dismissed error coram nobis petitions that were not brought in a diligent and timely manner – exactly as is the case here – must be dismissed.

DILIGENCE

Diligence in the Law and in this Case: The Arkansas Supreme Court has continuously and consistently ruled that error coram nobis petitions must be brought with due diligence. The Courts have also consistently held that it is the Defendant's burden to prove he acted with the required diligence. *Matthews v State,* 216 Ark. 447 (2016). To meet this burden the Defendant is required to show three things: that the Defendant was unaware of the fact at issue at the time of trial; that even through diligent action the Defendant could not have presented the fact at trial; and the Defendant, after having discovered the fact "did not delay" in bringing the petition. *Pinder v State*, 2012 Ark. 45 (2012). The Courts have declined to set an exact time limit, but they have ruled consistently that delays of several years – even substantially shorter delays than the current case – have violated the due diligence requirement. In the above referenced *Pinder* case, the Court ruled that a seven-and-a-half-year delay was not diligent and dismissed the petition. In *Echols v. State* the Court ruled that a ten-year delay was not diligent and dismissed the petition. This was despite the fact that the court recognized that on its face the Defendant's Petition included a ground which might have merit under an error coram nobis proceeding. Nevertheless, the Court found that the lack of diligence required the dismissal of the petition, notwithstanding the possibly cognizable claims in the petition. *Echols v State* 345 Ark . 414 (2003). As will be discussed immediately below, the Defendant, despite his repeated claims, can not point one single *specific* fact that was has not been known to him for decades. Letters referencing interviews – of which the Defendant himself was a party – and discussing his own victimhood obviously do not constitute new information under either coram nobis or *Brady*. This is a key factor in the deficiency of the Defendant's petition and will discussed herein at length. Despite what the Defendant claims repeatedly is new or recently revealed information, the Defendant obviously already knows the facts of his own life and victimhood, and

therefore they do not constitute new evidence and nor can they serve as the basis for a *Brady* claim under case law. Twenty years have elapsed since the Defendant's guilty plea - far more time than the seven and ten-year time frames that the Arkansas Supreme Court has previously ruled to be not diligent. The Defendant's petition was not diligently presented and must be dismissed under Arkansas Supreme Court case law.

The Defendant's Attempt to Show Diligence: The Defendant, in his petition, realizes he has a problem with the diligence requirement and attempts to off-set the issue through an affidavit from Samantha Jones. The Defendant claims the affidavit "uncovers" "undisclosed exculpatory information" that he did not receive until the affidavit was sent to him in May 2017. He therefore argues that he acted quickly and that the Petition was submitted with diligence. The Defendant included a copy of the affidavit in the 500-some pages of attachments with his petition. The State has also included it, for ease of reference to the Court, as an attachment to this response. Please see Attachment A. In light of the actual affidavit, the Defendant's claim new and "undisclosed evidence" is absurd and comes very close to being made in bad faith. The affidavit attests to no specific facts whatsoever. It merely states: "I . . . discovered information that Stocks, or his defense counsel, was not disclosed of by the State prior to Stocks signing the guilty plea agreement on June 6, 1997." She further states that information was sent to the Defendant beginning in early 2017. That's it: no details, no specifics, nothing further at all. Nor does the affidavit offer any basis for the affiant's own purported knowledge – how she knew what was or was not disclosed or, more importantly, what the Defendant may have already known independent of formal discovery.

To attempt to bolster the affidavit the Defendant references letters from Betty Dickey and Chief Peckat. The State has also attached those for ease of reference for the Court. Please see Attachments B and C. Again, the Defendant's claim here is absurd and flagrantly against the text of the documents he refers to. Neither document remotely "verifies" that there was previously undisclosed information to the Defendant as the Defendant claims. A plain reading of both documents shows the inaccuracy of the Defendant's claim. Both letters seem to suggest that not enough weight was given to the idea that the Defendant was also a victim of a sexual assault. Indeed, and oddly, the Defendant also references a letter from the attorney general referring to him as a victim. The Defendant seems to be suggesting that because documentation of his own victimhood was only recently disclosed to him and not turned over by the prosecutor that a writ of error cram nobis is appropriate. This is, again, an absurd claim and one that has been dealt with by the Supreme Court before: "Clearly, the previous events in Millsap's [the Defendant] life were known to him at the time of trial." *Millsap v State*, 2016 Ark. 391 (2016). In other words, the Defendant is obviously aware of things that happened to him. The Defendant seems to misunderstand both *Brady* and the new information requirement of an error coram nobis petition - the State is obviously not required to disclose to the Defendant the events of his own life. *Id.*

Again, the letters seem to suggest that greater weight and consideration should have been afforded to the Defendant's status of a victim. This is not a cognizable claim under

error coram nobis. At best, it is the subject of a Rule 37 petition. This will be discussed in greater detail when refuting the Defendant's individual claims, but it will suffice for now to say that it is an issue which the Courts have repeatedly said does not fall under the auspices of error coram nobis

Conclusion: The Defendant's submitted affidavit of Samantha Jones– his attempt to ward off a diligence challenge – is woefully inadequate. It is "wholly conclusory" and contains nothing but "bare allegations" Both of which courts have repeatedly denied as grounds to grant a hearing on post-conviction relief. To the extent that the Defendant is trying to claim that more should have been done in regards to him being a victim or that the State didn't provide documentation as to his own victimhood, his attempt at deflecting the diligence issue also immediately fails. The Defendant appears to not understand the law in this regard. Information that he himself had knowledge of – i.e. his own victimhood – is not new information under coram nobis and nor, by definition, can it constitute a *Brady* violation. As the Court in *Millsap* pointed out, a Defendant clearly has knowledge of events he was a part of and which happened to him. Either way the Defendant has wholly failed to show that he is in possession of information now that he has not been in prior possession of for the past twenty years. Attachment A, the affidavit referring to the "new" information is completely without specificity in regards to the basis of its conclusions and therefore can be afforded no weight. It is the Defendant's affirmative burden to prove diligence and he has completely failed to meet it. It is very difficult to conclude that Attachment A is anything but an attempt by the Defendant to deflect from the obvious diligence issue. Much more time has elapsed in this case than in other cases where the courts have dismissed petitions for lack of diligence. His petition was not diligently presented and must therefore be dismissed under the previously cited Arkansas Supreme Court precedent.

GROUND ONE

Discussion: The Defendant's first ground for error coram nobis is that the prosecutor in his case, Larry Cook, committed a Brady violation by not disclosing that he was conflicted in the case and should have recused. This ground fails for a number of straightforward reasons. First and foremost, evidence of a prosecutorial conflict is not *Brady* evidence. It is neither exculpatory nor mitigating and is not "material to guilt or punishment" *Brady v. Maryland*, 373 U.S. 83 (1963). Please note that the State is in no way conceding that Mr. Cook was conflicted. Whether he was or was not is immaterial to a Brady claim. It is simply not evidence favorable to the accused that tends to negate his guilt or mitigate punishment. ***If*** true it ***may*** be a violation of misconduct Rule 8.4, which the Defendant cited, but it is most certainly not a *Brady* violation. *Brady* deals with a specific type of prosecutorial misconduct. The type alleged by the Defendant in Ground One does not implicate *Brady* and does not apply to one of the mandated four categories of error coram nobis discussed in the above cited *Matthews* and innumerable other cases.

Ground One fails for other reasons as well. Leave aside the allegation not implicating *Brady* – the case law still requires that the new information "is such that it might have resulted in a different verdict. *Edgemon v. State*, 292 Ark. 465 (1987). In other words, it must be information that could have led to the Defendant being found not guilty. The Defendant plead guilty and was found guilty of murdering three people. The conviction was supported by a substantial factual basis, including: physical evidence, forensic evidence, witness statements, and, of course, the Defendant's own full confession. The Removal of Larry Cook from the prosecution of this case would have done nothing to change the verdict. The overwhelming weight of the totality of the evidence was against the Defendant and he was going to be convicted regardless of who represented the State. It is the Defendant's burden to show the results would have been different. He has not done so.

Finally, Ground One also fails for lack of diligence. Diligence was discussed at length above, including the clear legal standard and case law. Even leaving aside the other ways Ground One fails, it also fails for this reason. The Defendant himself admits in his petition that "Cook later revealed this prosecutorial misconduct by recusing from the trial of Jack Walls . . . ." *Defendant's Petition* at 8. That happened well over fifteen years ago. Even by the Defendant's own statement he was not diligent in bringing Ground One, and under *Echols* and the other above discussed diligence-related case law it must be dismissed

Conclusion: Ground One fails for a multitude of reasons. Primarily because it is not actually a *Brady* violation and therefore does not fall under one of the categories of error cram nobis. The mere allegation of a *Brady* violation alone is not enough. *Millsap v. State*, 2016 Ark. 391 (2016). The burden is one the Defendant to allege and then prove and actual *Brady* violation. He has failed to do so. He has likewise failed to show, even if a *Brady* violation, how this information would've resulted in a different verdict. He has also completely failed to meet his burden in showing that this claim diligently brought before the Court. Any one of these alone requires that the Ground One be dismissed, much less all of them being present.

GROUND TWO

Discussion: This ground appears to have two separate claims in it: first, the State committed a *Brady* violation by providing a copy of the file to a third party; and second, that the State committed a *Brady* violation by coercing the Defendant into a plea with the threat of the death penalty. Both claims fail and for much the same reasons discussed in Ground One.

The first claim, again, is simply not a *Brady* allegation. For the sake of brevity, the State will not repeat the recitation of case law and discussion from Ground One, but the same analysis applies. This is not a fact which tends to negate the guilt of the Defendant or mitigate punishment. The Defendant quotes what appears to be a pre-trial

gag order and is alleging a violation of that. But, again, that is not a *Brady* violation. To the extent a prosecutorial or court order violation occurred – something which the state does not at all concede – it is not a *Brady* violation and does not otherwise fall under one of the error coram nobis categories. A full factual refutation of the allegation is unnecessary as nothing relevant to error coram nobis is alleged.

The second claim in Ground Two also fails – it is neither a *Brady* violation nor a coerced plea. The Defendant alleges that the possibility of a death sentence if convicted at trial coerced him into pleading guilty. Allegations such as these have been decisively disposed of by appellate courts: "we have held that the mere pressure to plead guilty occasioned by the fear of a more severe sentence is not coercion." *Millsap v. State*, 2016 Ark 391 (2016). This argument has been raised by Defendants in the past and has been consistently denied by the courts. No further analysis is needed here.

Both claims in Ground Two also fail for lack of diligence. As has been previously discussed and supported by case law, it is the Defendant's burden to show that this info was diligently presented. His petition in the discussion of Ground Two is completely without reference to "new information" or when the Defendant may have obtained the "new information" not referenced. Information relating to the Defendant's victimhood is referenced, but, again, that is information regarding the facts of the Defendant's own life and therefore information he obviously already had. The Defendant, as it pertains to Ground Two, fails to make any showing – much less one that overcomes a heavy burden – that the claims were diligently presented.

It should also be noted that the Defendant, though not discussed the heading of Ground Two, also discusses *Brady* violations resulting from discussions at a church community meeting. Nothing discussed amounts to a *Brady* violation and fails for reasons already discussed in Ground One and Two – including that information discussed there, specifically details of the Defendant's own victimhood – was obviously already known to the Defendant. The Defendant has failed to meet the "heavy burden" in showing a *Brady* violation here, much less that the claim and "new information" was diligently brought before the court.

Conclusion: Ground Two fails for both lack of alleging an actual *Brady* violation and making a coercion claim that has been previously dismissed by appellate courts. The Defendant also fails to make any showing that is claim was diligently brought despite the almost twenty years that have passed since his guilty plea. Count Two should be dismissed.

GROUND THREE

Discussion: The Defendant here is making three claims: first, that the State committed a *Brady* violation by allowing Reverend Robert Marble to speak to the Defendant at the State Hospital and the Lonoke County jail; second, that the State

committed a *Brady* violation by not disclosing that the Defendant's mother had informed Rev. Marble that she had walked in on Jack Walls assaulting the Defendant, and, third and oddly, that Rev Marble is a mandated reporter and him not fulfilling that obligation is apparently also a *Brady* violation of some sort by the State. All of these claims fail for not being actual *Brady* violations, other error coram nobis violations, or both. The State will discuss each in turn

Claim one does not allege a *Brady* violation. The fact that a man talked to the Defendant while in jail is not a *Brady* violation. Not only is not a fact which tends to negate the guilty of the Defendant, but it is a fact already in the Defendant's possession. He obviously knew he was being spoken with and knew the content of the conversation. Because this knowledge was in his possession it can not be a *Brady* violation, even if the underlying fact actually was exculpatory (which it is not). Likewise, it is obviously not new information previously unknown to the Defendant such as is required for an error coram nobis. *Matthews v State*, 2016 Ark. 447 (2016). The State could list several other deficiencies with a *Brady* allegation in this claim – such as materiality or even a complete lack of evidence from the Defendant that the State was aware of the statement or its contents (in fact, in the transcript of the reverend's testimony at Jack Walls' trial provided by the Defendant, the reverend even admitted he had not disclosed his conversation with the Defendant or its contents to anyone before testifying due to pastoral privilege). However, due to the above arguments, a full discussion of those topics is not necessary.

Claim two is that the State withheld evidence that the Defendant's mother told Rev. Marble that she had caught Jack Walls abusing the Defendant. This claim fails for the same reasons as they above claim. It fails to allege a *Brady* violation because the fact – that the Defendant was victimized by Walls – was already obviously known to the Defendant. Therefore it is neither *Brady* information nor new and previously unknown information as required by *Matthews, supra*. The absurdity of this claim, and all of the defendant's similar claims, is shown in the Defendant's own Petition on page 12: "the defense was not aware that Marble had went to see Stocks at the State Hospital and jail". Let it be clear what the Defendant is claiming here - the Defendant is arguing that "the defense" (which is himself) was unaware that someone spoke with "Stocks" (also himself) at the hospital. The Defendant is actually claiming to be unaware of a conversation he himself had and therefore the existence of that conversation should have been disclosed to him. This is the definition of absurd. It is fundamental misapplication of the law and the facts. It shows how far the Defendant has to go to twist the underlying facts in an attempt to try and make them fit under *Brady* and thus be cognizable for error coram nobis. Attempts such as this are made throughout the Defendant's petition. **This is perhaps the underlying thrust of the Defendant's entire petition: attempting to twist facts into *Brady* allegations. The attempts are obvious for what they are and do not succeed.**

Claim three in Ground Three is completely extraneous to error coram nobis and may be summarily dismissed. Whether or not Rev Marble violated the mandatory

reporter statute has no bearing at all on the current issue and is not cognizable under error coram nobis

All of the claims in Ground Three also fail for lack of diligence. As has been shown, the Defendant was already in possession of the information being discussed and has been for decades. He has offered no excuse why this claim has not been previously made to the Court. He fails in his burden to show diligence. Ground Three may be dismissed for this reason alone

Conclusion: Ground Three must be dismissed for failure to allege an actual *Brady* violation or "new fact" as required by error coram nobis law. All information discussed was already known to the Defendant. The Defendant further failed in diligently presenting this information to the Court.

GROUND FOUR

Discussion and Conclusion: The Defendant is herein alleging that the State committed a Brady violation by not filing sexual assault charges against Jack Walls until after the case against the Defendant had been completed. This claim may be briefly disposed of as it is clearly not a *Brady* violation. Please see the numerous prior instances of case law citation in this response regarding *Brady* violations. The filing of a charge against a separate Defendant is simply and obviously not a *Brady* violation – it is not a fact tending to negate the guilt of the Defendant or to mitigate his punishment. Furthermore and as previously discussed at length, the Defendant already knew he was a victim of Jack Walls. He already possessed all of the information relating to his own victimhood. He could have proceeded to trial – in the face of the death penalty and with a mountain of evidence against him – and offered his victimhood as mitigating evidence. He chose not do so. The timing of the prosecution of Jack Walls changes nothing.

It is worth noting, all that aside, this claim is also clearly not brought with diligence. Even if none of the State's other arguments applied, the Defendant could have brought this claim with diligence soon after Walls was charged or convicted. He did not. He waited until well after a decade. The Defendant, again, fails to meet his burden in showing he acted with diligence.

GROUND FIVE

Discussion and Conclusion: Similar to previous claims, the Defendant is claiming that the State committed a *Brady* violation by not disclosing information regarding Jack Walls' "mind control" over the Defendant and having "ordered the Defendant to commit murder". As in the previous claim, this may be briefly disposed of. To support this claim the Defendant offers a hearsay statement from Wade Knox as given by Karen Knox. This claim again fails for reasons previously discussed. Again, the Defendant clearly has knowledge of the event so his own life. *Millsap v State*, 2016 Ark.

391 (2016). He knew details of his own victimhood and would have been aware if he himself had been ordered to kill someone else. The Defendant even states in his petition that "the psychological mind control of Stocks by Jack Walls continued for many years". He clearly had knowledge of these facts and therefore neither *Brady* nor another error coram nobis category can apply. Ground Five must be dismissed

It should be noted that the Defendant fails in his burden to show diligence again with this claim. This information was both known to the Defendant himself and discussed openly in the Jack Walls trial. He has no valid excuse for not bringing this claim earlier and in a diligent manner.

GROUND SIX

Discussion and Conclusion: The Defendant here claims that Chief Peckat and Special Prosecutor Betty Dickey agreed that Larry Cook withheld information from the Defendant. This Ground may also be disposed of in fairly short order as the claim is more of a conclusory statement - a conclusory statement that is not supported at all by the evidence offered in the Petition. This has already been discussed in the Diligence section of the State's response, but the letters from Dickey and Peckat completely fail to say what the Defendant claims they say. Again, please see Attachment B and C, which the state has included for ease of reference for the Court. They are completely devoid of any accusations at all against Larry Cook, much less any allegations that would constitute a Brady violation or fit one of the error coram nobis categories. Again, and it must be inferred because the Defendant's petition is unclear, but it appears that the Defendant is again referring to information regarding his own victimhood at the hands of Jack Walls. As previously discussed and supported with case law, the Defendant already possessed information related to the facts of his own life. According to his own petition the information at issue in Ground Six is that: "Stocks feared for his life for many years because of the sexual abuse and intimidation Jack used to keep him and other boy scouts silent about the sexual abuse." *Defendant's Petition* at 23. To be clear: the Defendant is once again accusing Larry Cook of not disclosing details to him of his own life. The State has already shown repeatedly in this response that this information does not and can not constitute either a *Brady* violation or another category of error coram nobis.

This Defendant also failed to diligently present this ground to the Court. The Defendant makes no showing or offers no evidence in Ground Six to excuse it from not being timely presented to the Court. Ground may and should be dismissed for this reason alone.

GROUND SEVEN

Discussion: The Defendant broadly raises two claims here: first, that the Defendant suffered from a mental disease or defect at the time of trial; and second, that because of the ineffective assistance from his counsel the mental evaluation he received

was deficient. Neither claim supports relief under error coram nobis and both must be dismissed.

The Defendant's first claim under Ground Seven is that he suffered from a mental disease or defect at the time of trial. Insanity at the time of trial is one of the four grounds recognized by error coram nobis but the facts in the Defendant's petition do not give rise to a meritorious claim. This claim fails for several reasons. Primarily, it fails because the Defendant in this claim does not reference any relevant facts that were not known to him at the time of trial in regards to his mental state or his mental health examination. The issue could be, and indeed was dealt with at trial. In his second claim under this Ground the Defendant claims it was dealt with ineffectively by his counsel. The State will address that momentarily. However, for now it is enough to say that it was dealt with. He was aware of his own history of abuse. He was aware of how things transpired in the mental examination. And he was aware of the subsequent court proceedings. Just like in *Millsap*, the Defendant has completely failed to show that there was any relevant or material information "concerning his competence of which the defense was either unaware at the time or trial or could not have uncovered at the time of trial." *Millsap v. State*, 2016 Ark. 391 (2016). This is not a secondary issue. The courts have repeatedly held that the information underlying an error coram nobis must be new information: "An issue that was known at the time of trial and could have been addressed is not cognizable in an error coram nobis proceeding." *Anderson v. State*, 2012 Ark. 270 (2012). The court in *Anderson* continues: "There is no ground stated for a writ of error coram nobis where the petitioner's grounds for the writ were known at the time of trial, or could have been known at the time of trial." *Id.* And the Anderson court again, in dismissing the petition: "The facts underpinning petitioner's claim of insanity were not hidden or unknown." *Id.* The Defendant points to no new information that has recently come to light in regards to his claimed mental illness – no new mental evaluation and heretofore unknown prior evaluation. This claim must be dismissed under the cited case law.

It is also worth noting in regards to the Defendants first claim in Ground Seven that while the title of the Ground alleges a mental disease or defect, the Defendant never goes into further detail as to what that mental disease or defect is. He stated that he "suffered greatly" from abuse and that it led to "many defects". No specific diagnosis or condition is ever offered much less shown under the weight of the Defendant's heavy burden. The support he does offer is again claims of "mind control" by Walls who then ordered the Defendant to kill his family. Not only is this not presented sufficiently to claim insanity at the time of trial but it was all information known to the Defendant at that time. He was obviously familiar with the facts of his own life. Again, no relevant or material new information is offered and so this claim must be dismissed.

For the second claim under Ground Seven, the Defendant alleges ineffective assistance of counsel in guiding him through the mental examination process and in handling the information in court. The Defendant goes on at some length about the *Ake* case and how his counsel failed him in obtaining a valid mental examination, but the claim may be dismissed in short order. The appellate courts have been clear that

ineffective assistance of counsel claims are not appropriate in an error coram nobis proceedings: "This court has held that claims of ineffective assistance of counsel are not cognizable in a coram-nobis proceeding." *Matthews v. State*, 2016 Ark. 447 (2016). This is true even – as is the case here – when the claims "couched as claims for issuance of a writ, were actually allegations of ineffective assistance of counsel and thus did not state a ground for a writ." *Id.* In other words, an ineffective assistance claim framed in the context of a mental evaluation is still an ineffective assistance claim and is not appropriate for an error coram nobis. There is a hard bar to bringing these claims in an error coram nobis petition and it bars them "even when the deadline for filing Rule 37 relief has passed." *Id.*

All of that discussion of the second claim under Ground Seven is to say nothing of the fact that, again, the Defendant has not alleged any new information and notwithstanding everything else it is still not cognizable under error coram nobis. For the same reason the Defendant also fails to meet his burden once again of a showing of diligence. In this case, *Echols* is precisely on point. In that case, as in this one, the Defendant alleged insanity at the time of trial and further alleged that he had only recently become more aware of his mental condition. *Echols v. State*, 354 Ark. 414 (2003). The Court found the Defendant's contentions to not be credible and stated "in Sum, given the circumstances of this case, waiting some ten years to raise the issue of competency to stand trial is not exercising due diligence." *Id.* The exact same thing is at issue in this case, only even more than ten years has passed. Notwithstanding all of the prior analysis and argument for this claim, The Defendant has not diligently presented his claim and it must be dismissed.

Conclusion: The Defendant has failed in his burden of presenting new evidence or information not previously known in regards to his mental condition and examination and therefore his claim of insanity must be dismissed. The further claim of ineffective assistance regarding his mental evaluation must be dismissed as the courts have clearly stated that those claims are not cognizable under error coram nobis. The Defendant has also completely failed to meet his burden in showing that he acted diligently in presenting this claim to the Court. The State has shown that the courts have dismissed claim of this exact nature and very similar facts for lack of diligence. Ground Seven must be dismissed.

GROUND EIGHT

Discussion and Conclusion: The Defendant here claims the Judge Hanshaw was biased and that because of that bias the competency determination and guilty plea proceedings were defective. This claim may be fairly shortly disposed of. Bias by the judge and improper proceedings are exactly the type of situations that error coram nobis are designed to **not** include. Not only is it not one of the four categories discussed in Matthews and numerous other cases, but the Defendant alleges no new information. The facts of the proceedings were known to the Defendant and available to be challenged either immediately or even through an appropriate motion to withdraw plea after the fact.

The Defendant here has completely failed to show any new fact or fact that he was not previously aware of. It has already been analyzed and discussed repeatedly herein but, again: "an issue that is known at the time of trial and could have been addressed is not one cognizable in an error coram nobis proceeding." *Anderson v. State*, 2012 Ark. 270 (2012).

The Defendant also fails in the diligence requirement and that failure is especially flagrant as to this claim. The Defendant and his counsel were always present in court, and no reason is offered why the issues with the guilty plea proceedings and competency determinations were not raised earlier. It is the Defendant's burden to show diligence and he has utterly failed to do so as to this claim.

GROUND NINE

Discussion and Conclusion: The Defendant alleges that his confession was coerced. The Defendant again discusses this matter at length in his petition but it may be disposed of after a only a brief discussion. Error coram nobis petitions include a category for a coerced guilty plea (an argument we have already dealt with in this case) but not for a coerced confession. The reason is obvious: confessions may be challenged at the trial court level. They can be and often are challenged through a variety of means. Again, this is simply not the type of claim that falls under error coram nobis. There are no new facts alleged here at all. The Defendant would have obviously had full knowledge of his own questioning, and the confession could have been challenged extensively at the trial court level through motions and hearings to suppress. Just because the Defendant decided not to do that does not give rise to an error coram nobis claim. As we just stated above in the discussion of Ground Eight: "an issue that was known at the time of trial and could have been addressed is not one cognizable in an error coram nobis proceeding." *Anderson v. State*, 2012 Ark. 270 (2012). That exactly describes these circumstances and therefore this claim must be dismissed.

For all of the above reasons, the Defendant has also failed to diligently present this claim. The Defendant has not even attempted to offer a reason why he has waited twenty years since his confession to challenge it (inappropriately) through error coram nobis. The burden is on him to show diligence and he has not done so. This claim must be dismissed for lack of diligence.

GROUND TEN

Discussion: Ground Ten is largely a summary of the Defendant's previous arguments. He alleges that his plea was not made knowingly due to four separate *Brady* violations by the State. The state will briefly deal with each in turn. None of them, however, actually amount to *Brady* information or constitute actual new evidence as is required.

The first alleged violation is of a number of items in regards to the investigation of Walls for sexual abuse. The information is summed up by the Defendant's petition as follows: "The above listed information that was in the State's possession would have shown that Stocks was a member of the same boy scouts troop as Hogan and that Stocks was sexually abused by the same scout master Charles Jack Walls III." Defendant Petition at 52. Again, and as has been by now discussed at length: the Defendant is trying to claim a *Brady* violation in regards to the facts of his own life. Again the Defendant commits the same legal error – he has knowledge of the facts of his own life. The State has shown multiple times in this response that this is not a *Brady* violation and is not new information as required by error coram nobis.

The second claim is in regards to Reverend Marble's conversations with the Defendant at the State Hospital and the jail. This has already been discussed and refuted at length by the State. Again, the Defendant clearly would have had knowledge of his own abuse and his own conversations with others about that abuse. The Defendant was well aware of his status as a victim and could have made full use of that as mitigation evidence at sentencing had he so chosen. Instead he chose to enter a plea of guilty and avoid the death penalty for a triple homicide. The Defendant presents no new material or relevant information and as such, as previously discussed, this claim must be dismissed.

The third claim is in regards to a letter from former Chief Peckat. The letter references the Defendant's victimhood. Again, the Defendant already had knowledge of this. It is not new information, is not *Brady* information, and therefore is not appropriate for an error coram nobis

The fourth claim is especially absurd given the information in this section of the Defendant's own petition. The Defendant claims that Larry Cook suppressed a statement from the Defendant's grandmother about "the sexual abuse and murderous training of Heath Stocks". This allegation - which the Defendant grandiosely claims is "compelling factual evidence" of suppressed evidence - is absurd. It is clear from the quoted sections of the Defendant's own petition that the "authorities" told her not to speak of her testimony because of the court's gag order. But even without that the claim is absurd. The Defendant is yet again alleging a Brady violation for the State withholding the facts of his own life. Such claims have been rebutted at length in this response

In addition, once again, the Defendant has failed to make a showing of diligence. The Defendant obviously knew that he was a victim and of the circumstances of his own life, and he has offered nothing to excuse the lack of timeliness in bringing this claim to before the Court. Ground Ten should therefore be dismissed.

Conclusion: Ground Ten fails for reasons already discussed at length – the Defendant is alleging no new information and is trying to claim information he already possessed should have been disclosed to him. As has been the case throughout his petition, the Defendant has also failed to act with diligence, which serves as a completely independent reason to dismiss this claim

Conclusion

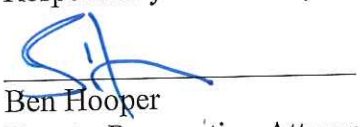
The fifty-six pages of the Defendant's petition and hundreds of attachments amount to absolutely nothing actionable under error coram nobis. He has repeatedly alleged *Brady* violations where none exist. And repeatedly alleged *Brady* violations where it was the facts of his own life that he is claiming should have been disclosed to him. He apparently hopes that the mere mention of *Brady* will be enough to compel a hearing. He is mistaken, as the law does not allow for that. As the State has shown at length, none of the Defendant's claims have merit or allege cognizable grounds for an error coram nobis petition. As such his petition may – and indeed must – be dismissed without a hearing.

The Defendant has also completely failed to act with diligence in presenting his claims to the court. Even had he presented cognizable error coram nobis claims (he did not), his petition still must be dismissed for a failure to act diligently. The Arkansas Supreme Court has dismissed petitions for failing to bring claims in seven years. The Defendant took twenty years. His attached affidavit and letters – despite his repeated claims – do nothing to point to actual new information that might excuse the delay in filing the petition. His central claim with the attachments seems to be that more should have been made of the mitigating evidence of his status of a sexual abuse victim. He could have done that. He could have – in the face of overwhelming evidence of his guilt – proceeded to trial and offered his mitigating evidence once he was convicted. He chose not to do so. That he now regrets his plea is not grounds for post-conviction relief, especially under error coram nobis.

The Defendant bears a "heavy burden" in bring this petition before the court and asking that the "extraordinarily rare" remedy of error coram nobis be granted. He has not met his burden. Not only has he not met it, he has failed to alleged a claim that may have merit. As such, his petition must be dismissed.

The State therefore requests that the Defendant's Petition for error coram nobis be dismissed.

Respectfully Submitted,



Ben Hooper
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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 October, 2017.

Heath Stocks
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