

IN THE LONOKE COUNTY CIRCUIT COURT OF ARKANSAS

HEATH STOCKS

PETITIONER

VS

CASE NO. 97-9

STATE OF ARKANSAS

RESPONDENT

**PETITIONER'S REPLY TO STATE'S RESPONSE TO THE MOTION TO STRIKE
RESPONDENT'S UNTIMELY ANSWER TO THE WRIT OF ERROR CORAM NOBIS,
THE AMENDMENT FOR ISSUANCE OF THE WRIT OF AUDITA QUERELA; AND
MOVING THIS COURT TO ENTER DEFAULT JUDGMENT FOR THE PETITIONER.**

Comes now, Heath Stocks, the Petitioner herein and pro se, and for his Reply to the Prosecution Response to Petitioner's Motion to Strike Respondent's Untimely Answer to the Writ of Error Coram Nobis, Writ of Audita Querela Amendment; and moving this Court to enter default judgment for the Petitioner, and does so state;

1. Stocks filed a Motion for the Issuance of the Writ of Error Coram Nobis and Writ of Audita Querela with this Court September 20, 2017.
2. The State filed a response to the motions on September 29, 2017. Stocks filed a Motion to Strike the Answer and the State responded on November 25, 2017.
3. The State is now alleging that the writ of error coram nobis and writ of audita querela are not civil writs and are not governed by the Arkansas Rules of Civil Procedure and rely upon the recent ruling in *Darrough v Kelley*, 2017 Ark. 314 (2017). In *Darrough*, the Court dealt with the applicability of the Rules of Civil Procedure as it relates to the writ of habeas corpus. The Court did not make a wide-sweeping decision that the Rules of Civil Procedure do not govern civil writs such as the writ of error coram nobis and writ of audita querela. The Court

specifically addresses that the Arkansas Rules of Civil Procedure do not apply to an action filed pursuant to habeas corpus statute *Ark. Code Ann. 16-112-103*.

4. The State's argument is misconstrued because the Arkansas Supreme has not made any decision that civil writs such as coram nobis and audita querela, are not governed by the Rules of Civil Procedure. The State is attempting to induce this Court to adopt a narrowing of judicial precedent to the State's advantage.

5. The State continues to misconstrue the legal application of diligence in an attempt to negate the merits of Stocks claims. There is no time limit for bringing a writ of error coram nobis and writ of audita querela; and prosecution misconduct (*Brady* violations) cannot be presented in a Rule 37 petition. Since, there is no time limitations this argument fails.

4. Audita Querela is a civil remedy that is available at common law to obtain relief from execution of a judgment. *Black's Law Dictionary (10th ed. 2014)*. Meaning, that the writ of audita querela is an exclusively civil remedy along with the writ of error coram nobis, that are used in criminal and civil proceedings. It would be judicially impartial to enslave these civil writs to a set of Rules of Criminal Procedure, that are not designed to address the writ of audita querela and writ of coram nobis.

5. These cases in Arkansas specifically sets forth that post-conviction proceedings are civil in nature. *Brooks v State, 1990, 303 Ark. 188, 792 S. W. 2d 617, Mullins v State, 1990, 303 Ark. 695, 799 S. W. 2d 550; Robinson v State, 1988, 295 Ark. 693, 751 S. W. 2d 335*.

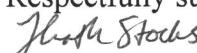
6. The Arkansas Supreme Court has decided that the courts should not consider an argument that presents no citation to authority or convincing argument. *Kelley v State, 350 Ark. 238, 85 S. W. 3d 893 (2002)*. The State has failed to present this Court with any existing Arkansas Rules of Criminal Procedure that govern the writ of error coram nobis or the writ of audita querela.

7. The common law writ of audita querela permits a defendant to obtain relief against judgment or execution because of some defense or discharge arising subsequent to the rendition of judgment. *11 C. Wright & Miller Federal Practice and Procedure* § 2867 at 235 (1973).

8. The writ of audita querela is civil in nature and can be used to vacate a criminal conviction in a post conviction remedial structure. *United States v Acholonu*, 717 F. Supp. 709, 710 (D. Nev. 1989); *United States v Ghebreziabher*, 701 F. Supp. 115, 116-117 (E. D. La. 1988); *United States v Salgado*, 692 F. Supp. 1265, 1269 (E. D. Wash. 1988). In *Salgado*, the court relied on audita querela to vacate the defendant's twenty-four years old tax evasion conviction. Similarly, the court in *Ghebreziabher* granted the defendant's motion to vacate one of three food-stamp fraud convictions. *See* 701 F. Supp. at 116-117. These courts agreed that the defendant could be relieved of the inequitable consequences of the judgment in his case, and that the writ of error coram nobis could address the legal defects in the convictions. *See id.* at 116-117; *Salgado*, 692 F. Supp. at 1267-69.

9. The motion to strike the answer should be granted in its entirety.

WHEREFORE, Stocks prays that this Court grant his Motion to Strike Respondent's Untimely Answer to the Writ of Error Coram Nobis, Writ of Audita Querela Amendment.

Respectfully submitted,

Heath Stocks

VERIFICATION OF SIGNATURE

I, Heath Stocks do swear and attest that I am filing this Reply to the State's Response to the Motion to Strike Respondent's Untimely Answer to the Writ of Error Coram Nobis, Writ of Audita Querela Amendment; and the facts asserted herein are to the best of my knowledge and is not done in bad faith.

/s/ 
Heath Stocks

State of Arkansas
County of Jefferson

SUBSCRIBED AND SWORN TO BEFORE me a Notary Public on this 5th day of Dec 2017.

My Commission Expires: 01-25-2026

/s/ Ethel Darrough
Notary Public

CERTIFICATE OF SERVICE

ETHEL DARROUGH
NOTARY PUBLIC-STATE OF ARKANSAS
JEFFERSON COUNTY
My Commission Expires 01-25-2026
of the Commission # 0269985

I, Heath Stocks hereby certify that I have serviced an exact copy

Prosecuting Attorney Chuck Graham, Courthouse, 301 N. Center St., Ste. 301, Lonoke AR

72086-2892 on this 5th day of December 2017 by U. S. Mail postage prepaid.

Heath Stocks

Heath Stocks