

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS  
TWENTY-THIRD JUDICIAL DISTRICT  
2<sup>ND</sup> DIVISION

STATE OF ARKANSAS

PLAINTIFF

v.

CASE NO. 43CR-97-9

HEATH STOCKS

DEFENDANT

**ORDER DENYING DEFENDANT'S MOTION/PETITION FOR WRIT OF ERROR  
CORAM NOBIS/ WRIT OF AUDITA QUERELA**

Now on this date is presented the Defendant's Motion/Petition for the Issuance of the Writ of Error Coram Nobis/Writ of Audita Querela to Reinvest Jurisdiction; and the Court being well and sufficiently advised as to all matters of law and fact, DOTH FIND AND ORDER:

**Findings of Fact**

1. Shortly after Christmas 1996 and on January 8<sup>th</sup>, 1997, the Defendant's mother tells Minister Robert Marble that the Defendant and Jack Walls have a sexual relationship. (See Robert Marble's testimony page 339 of Defendant's Petition for Writ of Error Coram Nobis.)
2. The Defendant murdered his mother, father, and sister on January 17, 1997.
3. The Defendant confessed to the murder of his mother, father, and sister on January 18, 1997. The Defendant also told law enforcement where they could recover physical evidence of showing his involvement in the crime.
4. The Defendant was charged with three (3) counts of capital murder on January 21, 1997.
5. The Defendant requested and had an Act 3 evaluation done. The report was completed on March 11, 1997 and found that the Defendant was fit to proceed.

6. The Defendant knowingly and voluntarily entered into a guilty plea on June 6, 1997. The Defendant was sentenced to life without parole on each count to run consecutively.
7. Minister Robert Marble testified at Jack Walls' sentencing hearing on February 4, 1998 that the Defendant told him that Jack Walls told the Defendant to kill his parents and that Jack Walls sexually abused him. Minister Robert Marble testified that the Defendant told him this information on two different occasions: once while the Defendant was in custody at the Lonoke County Jail and also when the Defendant was at the Arkansas State Hospital for his mental evaluation. Minister Robert Marble also testified that he advised the Defendant to disclose this information to his defense counsel and the Defendant refused to do so. These conversations by the Defendant and Minister Marble would have occurred before the Defendant's sentencing on June 6, 1997. (Minister Robert Marble's testimony pp. 339-340 of Defendant's Petition for Writ of Error Coram Nobis.)
8. On or about July 28, 1997, a victim forced Jack Walls at gun point to tell the victim's parents about the sexual abuse that Jack Walls committed against the victim and others. (Testimony of victim at Jack Walls sentencing hearing pp. 300-313 of Defendant's Petition.) This incident is how law enforcement learned of the acts of sexual abuse that Jack Walls had been committing. (See p. 308 of Defendant's Petition.)
9. In early August 1997, law enforcement interviewed multiple victims of sexual abuse perpetrated by Jack Walls, including the Defendant.

10. The Defendant was interviewed by Lonoke Police Chief Peckat while in prison and it is the first time the Defendant told anyone in law enforcement about the sexual abuse by Jack Walls.
11. On December 30, 1998 Prosecuting Attorney Betty Dickey (appointed as Special Prosecuting Attorney for the Jack Walls case) wrote a letter that stated “that the Public Defender knew or should have known about Jack Walls’ involvement in the murders of Joe, Bonnie and Heather Stocks.”. The letter was addressed to “To Whom it may concern” and appears to have been written for the benefit of the Defendant. Betty Dickey learned this information from Heath Stocks’ minister, maternal grandmother, and the Defendant Heath Stocks. (See p. 298 of Defendant’s Petition.)
12. Heath Stocks’ maternal grandmother, Annie May Harris, testified at Jack Walls’ sentencing hearing on or about February 4, 1998 that she learned of the relationship between Jack Walls and Heath Stocks from her daughter. She testified that her daughter, Barbara Stocks, mother of Heath Stocks, told her shortly before she was murdered about discovering the sexual relationship between Heath Stocks and Jack Walls. Annie May Harris testified she told no one, including the police, about this information before Heath Stocks entered a plea of guilty. (See Defendant’s Petition pp. 359-367.)
13. That the Defendant filed these Motions on September 20, 2017. The Defendant waited 20 years to file this Petition and bring these facts to the Court’s attention.
14. The Defendant admits in Ground 10 in his Petition for Writ of Error Coram Nobis that he never disclosed his relationship with Jack Walls to his defense counsel nor did the Defendant tell his attorneys about his two conversations with Minister Marble to

whom he disclosed this relationship before he entered a plea of guilty. “Defense knew nothing about these two interviews of Stocks by Reverend Marble.” (See Defendant’s Petition Ground 10 pp. 52-53.)

### **Writs of Error Coram Nobis and Writs of Audita Querela**

1. That a writ of error coram nobis and a writ of audita querela are very similar in nature because both allow a defendant to achieve relief based on newly discovered evidence following a conviction. The difference between the two is the timing and not substance. Hill v. State, 2017 Ark. 121. The newly discovered evidence or fact must be one that “through no fault or negligence of the defendant, was not brought forward before the judgement.” Mathews v. State, 2016 Ark. 447, 505 S.W.3d 670 (2016). A writ of error coram nobis is rarely granted. Id., citing State v. Larimore, 341 Ark. 397, 17 S.W.3d 87 (2000).
2. A writ of error coram nobis is available to a defendant to address errors that are found in one of four categories: (1) insanity at the time of trial, (2) coerced guilty plea, (3) material evidence withheld by the prosecutor, or a (4) third party confession to the crime during the time between conviction and appeal. Howard v. State, 2012 Ark. 177, 403 S.W.3d 38.
3. A defendant must use due diligence when filing for relief for a writ of error coram nobis. Newman v. State, 2009 ark 539, 354 SW.3d 243,248 (2009). “Due diligence requires that a defendant be unaware of the fact at the time of trial, the defendant could not have, in the exercise of due diligence, presented the fact at trial, and upon discovering the fact, the defendant did not delay bringing the petition. Roberts v. State, 2013 Ark. 56, 425 S.W.3d 771 (2013).

4. The main issues with the Defendant's petition are that he knew the facts he alleges in his Petition at the time of his sentencing and the Defendant was not diligent in bringing these facts to the court's attention until 20 years later.
5. The Defendant raises 10 grounds for relief in his 564 page motion and attachments. The Court will deal with each ground separately.

### **Ground One**

1. The Defendant's allegations in ground one fall outside the scope of error coram nobis. A prosecutorial conflict is not Brady material. The allegation is not of a mitigating nature or exculpatory and the allegation is not "material to guilt or punishment." Brady v. Maryland, 373 U.S. 83 (1963). To be a Brady violation, three elements are necessary: (1) the evidence must be favorable to the Defendant, because it is either impeaching or it is exculpatory; (2) that the State must have suppressed the evidence, either willfully or inadvertently; (3) the Defendant must have been prejudiced. Millsap v. State, 2016 Ark 391, 501 S.W.3d 381 (2016) citing State v. Larimore, 341 Ark. 397, 404, 17 S.W.3d 87, 91 (2000). Even if Prosecuting Attorney Larry Cook had a conflict in this case, he couldn't have known about it because law enforcement didn't know about Jack Walls sexually abusing the Defendant as a child and the Defendant's continued sexual relationship with Jack Walls at the time of Defendant's plea of guilty. Law enforcement didn't start an investigation into Jack Walls' crimes until July 29, 1997 when victims came forward to make reports to the Lonoke Police Department. (See Defendant's Petition p. 370.) The Defendant's grandmother testified she knew of the relationship, but told no one. (See Defendant's Petition pp. 359-367.) Minister Marble knew about the relationship at the time of

Defendant's sentencing but was prevented from disclosing the Defendant's statements because of pastoral privilege. (See Defendant's Petition pp. 337-344.)

2. Even if Larry Cook would have been replaced, the outcome of the case would not have been different. There was a full confession by the Defendant and he led law enforcement to physical evidence proving his involvement in the murder of his family.
3. Because of the negligence of the Defendant and his withholding facts from his defense attorneys, the possible conflict was never brought to light. This argument by the Defendant fails for lack of due diligence and because it is not a possible Brady violation.
4. Ground One is denied.

#### **Ground Two**

1. Neither a violation of a gag order or a defendant feeling pressured to enter a plea of guilty because of a more severe punishment are Brady violations. To be a Brady violation, three elements are necessary: (1) the evidence must be favorable to the Defendant, because it is either impeaching or it is exculpatory; (2) that the State must have suppressed the evidence, either willfully or inadvertently; (3) the Defendant must have been prejudiced. Millsap v. State, 2016 Ark 391, 501 S.W.3d 381 (2016) citing State v. Larimore, 341 Ark. 397, 404, 17 S.W.3d 87, 91 (2000). The Order Control of Publicity filed on March 20, 1997 prevented the parties from releasing information to the media. Even if law enforcement met with witnesses and family and showed them the evidence, it was not a violation. That was not the intent of the order. Even so, the alleged violation of the gag order, if it occurred, is complete hearsay and there is no

direct evidence such a “retreat” even occurred. The only evidence is an email with hearsay about the “retreat”. (See Defendant’s Petition p. 511.)

2. The Defendant alleges that Jack Walls was provided the casefile and used it to influence the Defendant’s family to coerce him to enter a plea of guilty. The Defendant does not allege any fear, duress, or threats of mob violence were used to coerce him into a guilty plea. This is fatal to his claim of coercion. Mathews v. State, 2016 Ark. 447, 505 S.W.3d 670 (2016).
3. The Defendant claims that the Defense was unaware of allegations that Jack Walls had trained Heath Stocks to be an assassin because the information was withheld by the State. But counsel for the Defendant was at a church meeting where this information was supposed to have been disclosed by Keith Anthony. (See Keith Anthony interview April 26, 2000 pp. 403-411.) This information is not contained in the notes from the meeting at the church provided by the Defendant, but the Defendant says his counsel, Edgar Thompson, was aware of these allegations in his Petition on page 11. (See Defendant’s Petition pp. 292-296.) This information was known to the Defendant at the time of trial because it is his life and he through his own negligence failed to disclose it to his counsel. The Defendant gave an interview to Lonoke Police Chief Peckat within a couple of months of his sentencing in this case alleging these very facts. (See p. 128 of Defendant’s Petition.) Events in a Defendant’s life are known to him, and since the Defendant had an opportunity to disclose those facts before trial, these are not grounds for writ of error coram nobis. Millsap v. State, 2016 Ark 391, 501 S.W.3d 381, (2016).

4. The Defendant also alleges under Ground Two that he was coerced to plead guilty because of the threat of the death penalty. The Arkansas Supreme Court has 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.)
5. The Defendant’s argument in Ground Two of his petition is denied.

### **Ground Three**

1. The Defendant’s conversation with Minister Marble was not revealed to anyone until the Defendant waived his privilege under Ark. Rules of Evidence 505. This occurred at Jack Walls’ sentencing hearing, on February 4, 1998, months after the Defendant had pled guilty to three counts of capital murder for killing his father, mother, and younger sister. This is not a Brady violation because the Defendant had the conversation and he controlled whether or not it was disclosed to third parties, which included his attorneys. The conversation with Minister Marble was revealed years ago at Jack Walls’ sentencing hearing and it was not withheld by the prosecuting attorney or law enforcement. The Defendant did not exercise due diligence in bringing this claim. *Newman v. State*, 2009 Ark 539, 354 SW.3d 243,248 (2009). The occurrence of previous events in the Defendant’s life were known to him at the time of trial. The Defendant had the chance to give those facts to his counsel before the Defendant entered a plea of guilty; therefore this is not grounds for relief under the Defendant’s petition. *Millsap v. State*, 2016 Ark 391, 501 S.W.3d 381, (2016).
2. Ground Three of Defendant’s Petition is hereby denied.



#### **Ground Four**

1. The filing of criminal charges is not a Brady violation. It is not exculpatory evidence. Being a victim of sex abuse or rape may mitigate a sentence but this information was already known to the Defendant and was known for 20 years since the charges were filed and never raised by the Defendant before. The Defendant has not exercised due diligence. Newman v. State, 2009 Ark 539, 354 SW.3d 243,248 (2009).
2. Ground Four of Defendant's Petition is hereby denied.

#### **Ground Five**

1. None of the information alleged in the Defendant's Petition for Ground 5 was in control of the State at the time the Defendant's pending case. The only person with knowledge about the allegations alleged in Ground Five was the Defendant. There is no evidence to indicate that the State had any knowledge of the Defendant being sexually abused until months after his guilty plea. The Defendant has known for 20 years about this information and never brought this information forward in this case. The Defendant has not exercised due diligence in bringing this Petition. Newman v. State, 2009 Ark 539, 354 SW.3d 243,248 (2009). The occurrence of previous events in the Defendant's life were known to him at the time of trial. The Defendant had the chance to give those facts to his counsel before the Defendant entered a plea of guilty; therefore this is not grounds for relief under the Defendant's Petition. Millsap v. State, 2016 Ark 391, 501 S.W.3d 381, (2016).
2. Ground Five of Defendant's Petition is hereby denied.

### **Ground Six**

1. The letters from Chief Peckat of the Lonoke Police Department and from Special Prosecutor Betty Dickey do not contain the information that the Defendant alleges. Chief Peckat states in his letter that the Lonoke Police Department did not begin an investigation into sexual abuse by Jack Walls until July 29, 1997. (See Defendant's Petition p. 370.)
2. Special Prosecutor Betty Dickey's letter states "that the Public Defenders know or should have known of Jack Walls' involvement" in the Defendant's case. Ms. Dickey states in her letter that she learned of this information from the Defendant's minister, maternal grandmother, and the Defendant. (Defendant's Petition p. 298.) Nowhere in this letter does it state that Prosecuting Attorney Larry Cook withheld any evidence from the Defendant. The Defendant is the one who withheld evidence from his own attorneys. The Defendant even admits in Ground 10 that he did not disclose any of this information to his attorneys. "Defense knew nothing about these two interviews of Stocks by Reverend Marble." (See Defendant's Petition Ground 10 pp. 52-53.)
3. Both of these letters that the Defendant relies on were written over fifteen (15) years ago. The Defendant has not exercised due diligence to bring this claim forward. Newman v. State, 2009 Ark 539, 354 SW.3d 243,248 (2009).
3. The Defendant's Petition Ground Six is hereby denied.

### **Ground Seven**

1. Insanity at the time of trial is one of the four grounds that is recognized by a petition for error coram nobis. Howard v. State, 2012 Ark. 177, 403 S.W.3d 38. The Defendant does

not bring forth any testimony or facts that show that he suffered insanity at the time of his plea. The facts the Defendant raises in his petition are facts that he knew before he entered his plea. He is the one that withheld this information from the Doctors at the Arkansas State Hospital and his attorneys. The Defendant had the chance to give all of this information to the doctors who examined him before the Defendant entered a plea of guilty; therefore, this is not grounds for relief under the Defendant's Petition. Millsap v. State, 2016 Ark 391, 501 S.W.3d 381, (2016).

2. The Defendant also raises an ineffectual assistance of attorney claim under Ground Seven. Error coram nobis proceedings are not the proper place to bring a claim for ineffective assistance of counsel claim. Mathews v. State, 2016 Ark 447, 505 S.W.3d 670 (2016), citing State v. Tejada-Acosta, 2013 Ark. 217, 427 S.W.3d 673 (2013).
3. Ground Seven of Defendant's Petition is denied.

#### **Ground Eight**

1. The Defendant claims that Judge Hanshaw was biased against the Defendant. The attorneys for the Defendant were aware of all allegations the Defendant made in his Petition and the proper time to raise these issues would have been before the guilty plea. Judge Hanshaw had no bias and even if Judge Hanshaw had any bias, for the Defendant to succeed on this point, the Defendant must show that he would not have been convicted if an unbiased judge would have been on the case. McArthur v. State, 2017 Ark. 120, 515 S.W.3d 585 (2017). The Defendant entered a plea of guilty and there was overwhelming evidence of the Defendant's guilt. The Defendant gave a full confession to the crime and led the police to physical evidence confirming his involvement in the crime. In this case, a different judge would not have made a difference.

2. The Defendant raises issues with his guilty plea and claims there is no record of him pleading before the court. The Defendant has waited 20 years to raise this issue. The Defendant would have been aware of this fact at sentencing and the Ark. Rules of Crim. Proc. are published. A fact or issue that was known at the time of trial and could have been remedied at trial is not one that Arkansas courts recognize. Anderson v. State, 2012 Ark. 270, 423 S.W.3d 20 (2012). The Defendant has not exercised due diligence to bring this claim forward. Newman v. State, 2009 Ark 539, 354 SW.3d 243,248 (2009).
3. Ground Eight of Defendant's Petition is denied.

#### **Ground Nine**

1. The Defendant alleges that his confession was coerced and that the court should grant his Petition on that ground. The issue is that a coerced confession is not recognized under a Petition for Writ of Error Coram Nobis. The Defendant could have raised this issue at the trial level but did not. He chose to enter a guilty plea on all counts. A fact or issue that was known at the time of trial and could have been remedied at trial is not one that Arkansas courts recognize. Anderson v. State, 2012 Ark. 270, 423 S.W.3d 20 (2012). The Defendant has waited 20 years and has not exercised due diligence to bring this claim forward. Newman v. State, 2009 Ark 539, 354 SW.3d 243,248 (2009).
2. Ground Nine of Defendant's Petition has no merit and is denied.


#### **Ground 10**

1. The Defendant admits in his Petition that he never disclosed his abuse/relationship with Jack Walls. The Defendant states that his attorneys did not know about Minister Marble's interviews with the Defendant or the content of those interviews. (See pp. 52-53 of Defendant's Petition.) The Defendant accuses the State in his entire Petition that

the State withheld information, but it was the Defendant who withheld information that may have helped his lawyers argue for some sort of mitigation for the Defendant. The Defendant's action of withholding this information for 20 years from his own counsel is his own negligence and relief cannot be granted because of his own actions. The Defendant had the opportunity to give these facts to his counsel before the Defendant entered a plea of guilty; therefore there are no grounds for relief under the Defendant's Petition. Millsap v. State, 2016 Ark 391, 501 S.W.3d 381 (2016).

2. Ground 10 of Defendant's Petition for relief is denied.

**IT IS SO ORDERED.**

  
Circuit Judge

1-18-18  
Date