

IN THE LONOKE COUNTY CIRCUIT COURT OF ARKANSAS

HEATH STOCKS

PETITIONER

VS

CASE NO. CR-97-9

STATE OF ARKANSAS

RESPONDENT

MOTION TO AMEND THE MOTION FOR THE ISSUANCE OF THE WRIT OF ERROR CORAM NOBIS TO INCLUDE THAT THE PETITIONER IS MOVING THIS COURT TO GRANT A MOTION FOR THE ISSUANCE OF THE WRIT OF AUDITA QUERELA, OR OTHER RELIEF.

Comes now, Heath Stocks, pro se and in forma pauperis, moving this honorable Court to grant his Motion to Amend the Motion for the Issuance of the Writ of Error Coram Cobis to include that the Petitioner is moving this Court to grant a Motion for the Issuance of the Writ of Audita Querela, other relief; and for his motion does so state;

JURISDICTION

The writ of coram nobis challenging a guilty plea is to first be filed in the trial court before proceeding to the Arkansas Supreme Court. *Scott v State, 2017 Ark 199, June 1, 2017*. This Court has jurisdiction to consider Petitioner's Motion for the Issuance of the Writ of Audita Querela, or other relief. See, *Pitts v State, 2016 Ark. 345, 501 S. W. 3d 803 (2016) and Hill v State, 2017 Ark. 121, 516 S. W. 3d 249, April 6, 2017*. The Arkansas Supreme ruled that a writ of audita querela is indistinguishable from a writ of error coram nobis in that it permits a defendant to obtain relief based on allegations of newly discovered evidence following the rendition of a judgment.

FACTS

1. Stocks filed his Writ of Error Coram Nobis on September 20, 2017.

2. Stocks moves to amend his original writ of error coram nobis petition, so that this Court may additionally consider his petition in conjunction with the provisions of a writ of audita querela.

3. It would be duplicitous for Stocks to restate the exact similar grounds and arguments. Stocks moves this Court to consolidate/incorporate grounds 1 thru 10 of the present writ of error coram nobis petition; (*See Petitioner's Motion for the Issuance of the Writ of Error Coram Nobis, pages 1 thru 62*) and to consider Grounds 1 thru 10, as newly discovered evidence under the provisions allowable by law, for granting a writ of audita querela.

4. Grounds 1 thru 10, are the newly discovered evidence, that was not available to Stocks, at the time of the guilty plea agreement. (*See Petitioner's Motion for the Issuance of the Writ of Error Coram Nobis, pages 1 thru 62*)

STANDARD OF REVIEW:

A writ of audita querela is indistinguishable from a writ of error coram nobis in that it permits a defendant to obtain relief based on allegations of newly discovered evidence following the rendition of a judgment. See *Pitts v State, 2016 Ark. 345, at 1, 501 S. W. 3d 803, 804*; see **7A C. J. S. Audita Querela section 2 (2016)** (*the difference between coram nobis and audita querela is largely one of timing not substance*). Citing to Rule 60 (k) (2016) of the Arkansas Rules of Civil Procedure, the State argued that the writ of audita querela has been abolished in both civil and criminal cases. However, the Arkansas Supreme Court has recently recognized the writ as an avenue of relief available to a petitioner challenging his criminal judgment. *Pitts, 2016 345, at 1, 501 S. W. 3d 803* (*stating that the petitioner sought a writ of coram nobis as well as a writ of audita querela and granted the petition to seek coram nobis relief as well as other relief*). In *Pitts v State, 2016 Ark. 345, 501 S. W. 3d 803 (2016)*, the petitioner filed a writ of error

coram nobis and writ of audita querela, or other relief in the Arkansas Supreme Court and the court granted relief. Thus, Stocks motion for the issuance of the writ of audita querela is properly before this Court.

Stocks incorporates grounds 1 thru 10, of the present writ of error coram nobis petition, in his motion for the issuance of the Writ of Audita Querela, and moves this Court to consider this newly discovered evidence under the provisions and law allowable for the adjudication of a writ of audita querela. *Pitts v State, 2016 Ark. 345, 501 S. W. 3d 803 (2016)*

CONCLUSION

WHEREFORE, petitioner prays that this court grant his Motion to Amend the Motion for the Issuance of the Writ of Error Coram Cobis to include that the Petitioner is moving this Court to grant a Motion for the Issuance of the Writ of Audita Querela, other relief; and that this court conduct an evidentiary hearing to reach the merits of this petition.

Respectfully submitted,
Heath Stocks
Heath Stocks

VERIFICATION OF SIGNATURE

I, Heath Stocks do swear and attest that I am filing this Motion to Amend the Motion for the Issuance of the Writ of Error Coram Cobis to include that the Petitioner is moving this Court to grant a Motion for the Issuance of the Writ of Audita Querela, other relief; and the facts asserted herein are to the best of my knowledge and is not done in bad faith.

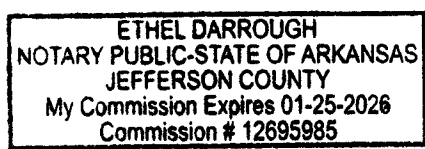
/s/ *Heath Stocks*
Heath Stocks

State of Arkansas
County of Jefferson

SUBSCRIBED AND SWORN TO BEFORE me a Notary Public on this 20th day of Sept 2017.

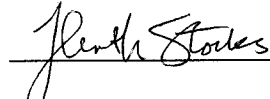
My Commission Expires: 01-25-2026

/s/ *Ethel Darrough*
Notary Public



CERTIFICATE OF SERVICE

I, Heath Stocks hereby certify that I have serviced an exact copy of the foregoing to the Prosecuting Attorney Chuck Graham, Courthouse, 301 N. Center St., Ste. 301, Lonoke AR 72086-2892 on this 26 day of September 2017 by U. S. Mail postage prepaid.



Heath Stocks