

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
09/28/2021
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. VENESSA BASTON

Criminal Court for Morgan County
No. 2019-CR-32 Michael S. Pemberton, Judge

No. E2021-00187-CCA-R3-ECN

The petitioner, Venessa Baston, through counsel, appeals from the Morgan Criminal Court's judgment summarily dismissing her petition for a writ of error coram nobis. The State has filed a motion to affirm the trial court's judgment pursuant to Tennessee Court of Criminal Appeals Rule 20. Following our review, we conclude that the State's position is well-taken and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Alan R. Moore, Lenior City, Tennessee, for the petitioner, Venessa Baston.

Herbert H. Slatery III, Attorney General and Reporter; Renee W. Turner, Senior Assistant Attorney General; Russell Johnson, District Attorney General; and Robert C. Edwards, Senior Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On May 9, 2002, the petitioner pleaded guilty in Morgan County Criminal Court to first degree murder and was sentenced to life imprisonment. The petitioner unsuccessfully pursued a petition for post-conviction relief, the denial of which was affirmed by this court on appeal. *Venessa Baston v. State*, No. E2003-02471-CCA-R3-PC, 2004 WL 1269097 (Tenn. Crim. App. June 9, 2004), *perm. app. denied* (Tenn. Nov. 8, 2004). Thereafter, the petitioner unsuccessfully pursued a motion to reopen the post-conviction petition, which alleged that the petitioner's medical and mental health histories establish that she is actually innocent of the offense. This court denied permissive review of the trial court's order denying the motion to reopen. *Venessa Baston v. State*, No.

E2007-01706-CCA-R28-PC (Tenn. Crim. App. Oct. 1, 2007) (order), *perm. app. denied* (Tenn. Dec. 26, 2007).

On May 6, 2019, the petitioner filed a petition for a writ of error coram nobis alleging that she was denied a mental health evaluation at the time of trial that would have established she lacked the mental capacity to enter the plea. On June 24, 2019, the trial court appointed counsel. Thereafter, the State filed a response to the petition arguing that the petition should be dismissed because it was filed untimely and the allegation concerning the petitioner's mental health was not newly discovered. On January 22, 2021, the trial court summarily dismissed the petition, ruling that the petition was untimely and not based upon newly discovered evidence. The petitioner, through counsel, filed a timely notice of appeal. Counsel has not responded to the State's Rule 20 motion to affirm the trial court's judgment.

The State correctly asserts that the trial court's summary dismissal should be affirmed because a writ of error coram nobis is not an available procedure to challenge a conviction arising from a guilty plea. *Frazier v. State*, 495 S.W.3d 246, 253 (Tenn. 2016). When an opinion would have no precedential value, this court may affirm the judgment or action of the trial court by memorandum opinion when the judgment is rendered or the action taken in a proceeding without a jury and such judgment or action is not a determination of guilt and the evidence does not preponderate against the findings of the trial court. *See* Tenn. Ct. Crim. App. R. 20. We conclude that this case satisfies the criteria of Rule 20. Upon consideration of the foregoing and the record as a whole, we affirm the judgment of the Morgan County Criminal Court pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., JUDGE