

Lack of Coram Nobis Hurts Convicted Innocents

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Since 1989, over 1,700 people have been exonerated of crimes they did not commit. Among the lessons learned from those exonerations is that the criminal justice system is slow to react to the needs of the convicted innocent trying to gain their freedom or clear their names. Last March, the Pennsylvania Supreme Court disappointingly ruled that the timehonored common-law doctrine of coram nobis—which dates back to our nation’s founding—has no place in Pennsylvania even to bring justice to the convicted innocent. Coram nobis has been used over the centuries to right terrible wrongs and bring justice to the wrongly convicted. But under the court’s recent holding in *Commonwealth v. Descardes*, -- A.3d --, No. 27 MAP 2015, (Pa. Mar. 29, 2016), that doctrine has essentially ceased to exist.

Coram nobis has been used to “challenge the validity of a judgment based upon facts not before the court when the judgment was entered.” The U.S. Supreme Court has said coram nobis provides a way to collaterally attack a criminal conviction for a person no longer “in custody” who cannot seek habeas relief, in *United States v. Chaidez*, 133 S.Ct 1103, fn. 1 (2013). The “ancient” writ of coram nobis has been available at common law to correct errors of fact, without limitation of time, “for facts that affect the ‘validity and regularity’ of the judgment,” as in *United States v. Morgan*, 346 U.S. 502, 507 (1954). While use of the writ in state courts has been more limited, Pennsylvania courts historically recognized coram nobis as “generally available in Pennsylvania, of course,” as in *Commonwealth ex rel. Stevens v. Myers*, 213 A.2d 613, 620, n.15 (1965). The writ was limited by statute in 1966 when the Pennsylvania legislature adopted the Post-Conviction Hearing Act (PCHA), and even more so when the PCHA was changed in 1988 and 1995, morphing into our present Post-Conviction Relief Act (PCRA). Under the current statute, only those serving a sentence can apply for relief under the PCRA, 42 Pa. C.S. Section 9543(a)(1)(i).

Although the law declared the statute to be “the sole means of obtaining collateral relief” encompassing “all other common law ... remedies for the same purpose that exist ... including coram nobis,” courts nonetheless recognized the availability of the ancient writ of coram nobis where a given claim was not “cognizable” under the PCRA.

In *Descardes*, Claude Descardes, a Haitian national, pleaded guilty to felony insurance fraud but was not told when he entered the plea he was subject to automatic deportation. Descardes completed his agreed-upon one-year probation sentence and left the United States two years later for a visit. When he tried to re-enter the country, he could not because of his conviction. Because his sentence was completed, Descardes could not file a PCRA petition challenging the stewardship of his counsel who failed to tell him he would be deported. Instead, he filed a writ of error coram nobis under recent Supreme Court law requiring plea counsel to tell a client if a conviction has collateral consequences for immigration status.

On appeal to the Pennsylvania Supreme Court, the Pennsylvania Innocence Project supported the continuation of coram nobis as a necessary means to correct gross injustices for those convicted of crimes they did not commit but who have completed their sentence. Even when freed from their unjust incarceration, innocent people continue to suffer. They have been unjustly labeled "criminal." Their families suffer that stigma. They have limited opportunities for jobs, support, and education.

And, in too many cases, proof of innocence only becomes available years after a conviction: witnesses who fear the true perpetrator become emboldened by the passage of time, scientific developments call into question the reliability of expert trial testimony or shed new light on old evidence. The investigation of an innocence claim is a time consuming and laborious affair. A study of the Pennsylvania Innocence Project's first 250 DNA exonerations revealed that the average length of time from conviction to exoneration was 15 years, wrote Brandon L. Garrett in "Convicting the Innocent" (Harvard 2011). According to the same study, "One of the most haunting features of these exonerations is that so many were discovered by chance." All of which means that it is inevitable some individuals who have been convicted of crimes they did not commit will only succeed in discovering the evidence that disproves their guilt after they have completed their sentences, and that through no fault of their own.

But for those who have completed their sentences, the opportunity for achieving justice is nonexistent. As the prime purpose of the PCRA is to "provide for an action by which persons convicted of crimes they did not commit ... may obtain collateral relief," it is unthinkable that an innocent person will be forever shackled to the myriad of consequences from a wrongful conviction-and that the actual perpetrator would continue to go undetected-just because the innocent person's sentence ended before the exonerating evidence came to light. And yet that is precisely the legacy of the Descardes decision: closing off any path to collateral review for a person who only acquired the evidence establishing his actual innocence once he was out of custody.

Now, under the Supreme Court's holding, a person convicted of a rape, child molestation, or other infamous crimes he did not commit will carry that badge of infamy for the rest of his life even where DNA testing establishes conclusively, but only after he has completed his sentence, the badge was undeserved.

It is hardly conscionable to afflict an innocent person with the disabilities of a serious conviction in perpetuity because he had the misfortune of completing his sentence before he had the evidential wherewithal to prove his innocence. The extinction of coram nobis as a means to challenge the wrongful conviction of a truly innocent person is a grave miscarriage of justice, only causing the stain of a wrongful conviction to exist where it could be cleansed.

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