

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 11, 2026 Session

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Appellate Courts

TIMOTHY P. GUILFOY v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2011-A-779 Khadija Lanice Babb, Judge

No. M2025-01019-CCA-R3-ECN

The Petitioner, Timothy P. Guilfoy, was convicted in 2011 of one count of rape of a child and three counts of aggravated sexual battery, and the trial court sentenced the Petitioner to forty years. In 2024, the Petitioner filed an untimely petition for writ of error coram nobis, his second, alleging newly discovered evidence of his actual innocence. The trial court dismissed the petition, finding that the newly discovered evidence did not provide clear and convincing proof of actual innocence, which is required to toll the one-year statute of limitations on such petitions. On appeal, the Petitioner contends the trial court erred when it denied his petition for relief because, in doing so, the court: (1) misapplied *Clardy v. State*, 691 S.W.3d 390 (Tenn. 2024); (2) failed to correctly analyze the new evidence and logically determine whether it established his actual innocence; (3) made improper credibility determinations and factual findings; (4) violated due process by dismissing the petition without considering preserved federal constitutional claims; and (5) failed to provide a meaningful state forum to adjudicate his preserved federal claims. After review, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, P.J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and J. ROSS DYER, JJ., joined.

Patrick L. Looper, Knoxville, Tennessee, for the appellant, Timothy P. Guilfoy.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Christopher Ricardo Buford, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the Petitioner's sexual assault of two minor children. For these offenses, a Davidson County grand jury indicted the Petitioner for five counts of aggravated sexual battery (Counts One through Five) and three counts of rape of a child (Counts Six through Eight). At his trial, the following evidence was presented: The "Mother" has three daughters: A.A., T.A., and J.A.¹ In 2005, the Mother and her daughters lived in an apartment in Nashville with the Mother's father ("Grandfather"). The Petitioner lived in the apartment next door with a roommate. The Mother and the Petitioner developed a friendship over time. At one point, the Grandfather purchased a house on Saturn Drive in Nashville. He, along with the Mother and her three daughters, moved into the home. Around the same time the family moved out of their apartment, the Petitioner moved out of his apartment to another residence in Nashville. He often visited the family at the Saturn Drive house. The Petitioner later moved to Missouri but continued to maintain contact with the family through phone calls and visits.

The Saturn Drive house had an unfinished attic, a main floor, and an unfinished basement. The Mother usually slept in the attic, and the girls slept on the main floor but did not have their own separate bedroom. Between the three sisters, they shared a bunk bed, a futon, and a couch that had a pull-out bed.

While living in Missouri, the Petitioner worked in marketing tours. His work occasionally took him to Nashville, where he would stay with the family in the Saturn Drive house. Although the Mother did not intend for the Petitioner to sleep in bed with her daughters during his visits, she knew he would and did not say anything to him about it. "She remembered one particular occasion when she saw [the Petitioner] in bed with J.A. in the top bunk of the bunk bed. At that time, the bunk bed was in the dining room. She also recalled finding [the Petitioner] in bed with T.A. on '[m]ultiple' occasions." *State v. Guilfoy*, No. M2012-00600-CCA-R3CD, 2013 WL 1965996, at *2 (Tenn. Crim. App. May 13, 2013).

The Mother decided she did not wish to live in Nashville anymore and expressed her intention to move to Clarksville. The Petitioner had earlier voiced an interest in purchasing a house and renting it out and, upon learning of the Mother's intent to move to Clarksville with the daughters, he purchased a house there and agreed to rent it to the Mother for \$700 a month. The Petitioner was welcome to stay at the Clarksville house whenever he was in town. The family moved into the Clarksville home in September 2008.

The Mother had been attending a junior college in Clarksville in the summer months leading up to the move. The Mother was unable to pay rent to the Petitioner for the month

¹ We are using initials for the children and the terms "Mother" and "Grandfather" to protect the minor victims.

of September, so she and the Petitioner agreed that she would pay an extra \$50 in the subsequent months. The Mother dropped out of school in October and paid part of her rent for that month and November. She obtained employment in December and paid rent for December and January. The Mother was fired from her job in February 2009. The next month, in March 2009, the Petitioner told the Mother that he was having a difficult time paying the mortgage on the Clarksville house and would have to find a tenant to pay rent if she could not pay. The Mother told the Petitioner she intended to file her federal income tax return early to obtain her refund and reimburse him for past due rent. She never got a refund.

One morning in the middle of March 2009, on or about March 15, the Grandfather phoned the Mother to tell her that J.A. told him, “what happened,” and urged her to speak with her daughters. The girls had already left for school on the bus, so the Mother retrieved them from school. It was then that J.A. disclosed to the Mother that the Petitioner had touched her inappropriately. T.A. disclosed to the Mother that she too had been touched inappropriately by the Petitioner. After the girls’ disclosures, the Mother called 911 and made a report to police. An investigation into the disclosures ensued.

As part of the investigation, the Mother agreed to participate in four controlled phone calls with the Petitioner. These phone calls were recorded, unbeknownst to the Petitioner. One phone call bears relevance to this appeal. During that phone call, which took place on March 24, 2009, the Mother informed the Petitioner that J.A. disclosed to her school guidance counselor that someone had been touching her inappropriately. The Mother told the Petitioner that J.A. did not specify to the counselor who was touching her but insinuated over the phone that J.A. told her it was the Petitioner. The Petitioner denied any wrongdoing. The police officer who assisted the Mother with this controlled phone call would later testify that she suggested to the Mother that the Mother inform the Petitioner that J.A. made the initial disclosure to a guidance counselor, which suggestion was false but was made for purposes of conducting the controlled phone call.

The State brought charges against the Petitioner in connection with J.A. and T.A.’s allegations of sexual abuse, and his trial commenced in October 2011. Both girls, along with the Mother, testified. J.A. was eleven years old when trial began, and T.A. was twelve years old.

We previously summarized J.A.’s testimony as follows:

Sometimes [the Petitioner] would spend the night at the house. On some of these occasions, [the Petitioner] would sleep in J.A.’s bunk bed with her. J.A. testified that, on one of these occasions, [the Petitioner] touched her “private” with his hand. She stated that he touched her skin by putting

his hand down the front of her pants. She also stated that his hand moved and that she got up and went to the bathroom. She then went to sleep with one of her sisters. J.A. testified that [the Petitioner] touched her in this manner on more than one occasion. J.A. stated that, when [the Petitioner] touched her while in bed with her, she was not sure if [the Petitioner] was awake at the time the touchings occurred.

J.A. also testified that, at another time, she was sitting on [the Petitioner]'s lap on the couch. [The Petitioner] put his hand down the back of her pants and then slid his hand under her legs. He touched her "private" on her skin. When shown a drawing of a girl's body, J.A. identified the genital region as the area she referred to as her "private."

. . . .

After a while, J.A. decided to tell Grandfather what had happened. This was some time after she and her family left the house on Saturn Drive and moved into a house in Clarksville that [the Petitioner] owned. Grandfather remained in the house on Saturn Drive. When she told Grandfather what [the Petitioner] had done, he told her to tell Mother. She did not do so, however, because she did not think Mother would believe her. Some time later, Grandfather told Mother what J.A. had told him but did not identify [the Petitioner]. J.A. then told Mother what had happened. According to J.A., Mother then told her boyfriend. J.A. and T.A. went to school, but Mother came and got them out of school a little later. She took them home and "called the cops."

On cross-examination, J.A. stated that the touching on the couch occurred while she was in second grade. At the time, her sisters were in the room with her. Also home at the time were Grandfather, her grandmother, Mother, and Mother's boyfriend, "Bob-o." J.A. acknowledged that [the Petitioner]'s visits were sometimes short, and he did not spend the night. She and her sisters were glad to see [the Petitioner] during his visits. She did not remember [the Petitioner] taking her anywhere by herself. He never said anything to her that made her uncomfortable.

J.A. admitted that, at the time the touchings occurred, she wore a "pull-up" because she had a problem with bed-wetting. She stated that she did not know if she was wearing a pull-up when [the Petitioner] touched her on the occasions she testified about. She also stated that [the Petitioner] had been lying behind her and she was facing away from him. She did not know

if he was awake or asleep when the touching occurred. She stated that she had watched the videotape of her interview twice.

On redirect examination, J.A. stated that the only thing about [the Petitioner] she did not like was the touchings. She never got mad at him or fought with him. She never saw her sisters or Mother be mad at him. When asked how many times [the Petitioner] touched her inappropriately, she responded, "Maybe three or four times."

Guilfooy, 2013 WL 1965996, at *4-5. T.A. testified to the following:

[The Petitioner] spent the night at the house on Saturn Drive "maybe three times." On these occasions, [the Petitioner] slept in the family room or the dining room. On one particular occasion, [the Petitioner] slept in T.A.'s bed. She testified: "I was about to go to bed. It was either on the futon or the bunk bed. I'm not too sure. He had climbed in the bed, and I was already laying down. And he rolled me over and put his hand down my pants." [The Petitioner] touched her "private part" with his finger, on her skin. She added that [the Petitioner]'s finger "went inside [her] private part." She left her bed and got in bed with her big sister. She added that she was "not too sure" if [the Petitioner] was awake when this occurred.

T.A. testified that, on another occasion, she was laying [sic] on her bunk bed when [the Petitioner] came in and started touching her. She tried to get up, but he held her down. He touched her private part with his finger again, and she "just started crying." She got up, telling him that she had to go to the bathroom. She left and stayed away. T.A. stated that [the Petitioner] had touched her on "[t]he inside." She also stated that this episode caused her to "want to puke."

T.A. testified that, in response to [the Petitioner]'s actions, she started wearing khaki pants to bed because they did not have an elastic waistband. She stated that [the Petitioner] touched her another time while she was wearing her khaki pants and that he unzipped and unbuttoned them. This happened on her bunk bed. She testified, "[h]e touched me with his finger on [her] private part on [her] skin on the inside."

T.A. testified that [the Petitioner] touched her more than three times. The touchings were similar to one another. When asked to indicate on a drawing the parts of the body that [the Petitioner] touched, T.A. indicated the female genitalia. When asked what she meant by "inside," she indicated, as

reported by the prosecutor for the record, “the outer labia of the female genitalia.”

T.A. . . . stated that she never told anyone about the touchings. She recalled J.A. telling Grandfather, however, and she remembered when Mother spoke with them while they were waiting for the school bus. T.A. testified that J.A. told Mother what had happened and that Mother began to cry. Both the girls began to cry, too. Nevertheless, the girls got on the bus and went to school.

Mother picked them up from school early that day, and they went to the District Attorney’s office. . . .

. . . .

On cross-examination, T.A. acknowledged that, in July 2011, she testified that [the Petitioner] had not touched her in the same place that a tampon would go. Rather, she had earlier testified that he touched her “[l]ike on top of it,” “[l]ike not literally on the outside, but like on the outside of it, yes, but like inside,” and “[b]ut on the top, like where something else—like I don’t know. Yeah. It wasn’t like literally inside, inside, but it practically was. Yes.” On cross-examination at trial, she testified that [the Petitioner] touched her inside, where a tampon goes.

Id. at *5-6.

The jury found the Petitioner guilty of four counts of aggravated sexual battery (Counts One, Two, Three, and Eight), two counts of rape of a child (Counts Six and Seven), and one count of assault (Count Four). The State dismissed the aggravated sexual battery charge on Count Five. The trial court sentenced the Petitioner to an effective sentence of seventy years.

The Petitioner appealed. On appeal, this court merged two of the Petitioner’s convictions of aggravated sexual battery against J.A. (Counts One and Two) into a single conviction of aggravated sexual battery, merged the Petitioner’s assault of J.A. conviction (Count Four) into his aggravated sexual battery of J.A. conviction (Count Three), and merged two of the Petitioner’s rape of a child convictions against T.A. (Counts Six and Seven) into one rape of a child conviction. *Guilfoy*, 2013 WL 1965996, at *24. This court affirmed the Petitioner’s remaining aggravated sexual battery conviction (Count Eight) and remanded for resentencing. *Id.* On remand, the Petitioner was sentenced to a total effective

sentence of forty years for his three aggravated sexual battery convictions and one rape of a child conviction.

The Petitioner filed a petition for post-conviction relief, alleging ineffective assistance of counsel. The post-conviction court denied his petition. The Petitioner appealed the denial of his petition to this court. This court affirmed the denial in a 2015 opinion. *Guilfoy v. State*, No. M2014-01619-CCA-R3-PC, 2015 WL 4880182 (Tenn. Crim. App. Aug. 14, 2015).

In 2017, the Petitioner filed his first petition for writ of error coram nobis.

Attached to his petition was an affidavit from the jury foreperson stating that videotaped forensic interviews of the victims were admitted into evidence at trial but not played in the courtroom during the trial, that she requested that the jury be allowed to view the interviews in the jury room during its deliberations, and that the jury had viewed them. The State responded to the petition by arguing that it was barred by the statute of limitations. On June 23, 2017, the coram nobis court entered a written order denying the petition on the grounds that it was time-barred and failed to state a cognizable claim for coram nobis relief.

Guilfoy v. State, No. M2017-01454-CCA-R3-ECN, 2018 WL 3459735, at *1 (Tenn. Crim. App. July 17, 2018). The Petitioner appealed the denial of his first coram nobis petition to this court. In a 2018 opinion, this court affirmed the denial of the petition. *Guilfoy*, 2018 WL 3459735, at *4.

On December 17, 2024, the Petitioner filed a second petition for writ of error coram nobis, alleging the existence of newly discovered evidence of his actual innocence. This petition is the subject of this appeal. The Petitioner identified as the newly discovered evidence two comments T.A. made on a Facebook post on January 18, 2024. In her comments, T.A. stated that she and J.A. did not attend school on the day of the disclosure. The Petitioner argued this evidence clearly and convincingly showed his actual innocence because it undermined the disclosure narrative presented by the State at trial—that the girls initially disclosed the sexual abuse to a guidance counselor at school. According to the Petitioner, if the girls did not go to school that day, they could not have disclosed alleged sexual abuse to a guidance counselor. The Petitioner maintained that, if the girls could not have made the disclosures to the guidance counselor, then the Mother fabricated the disclosures. He claimed the Mother had a motive to fabricate allegations of sexual abuse against him because she owed him past-due rent and was at risk of being evicted from the Clarksville home.

Also on December 17, 2024, Petitioner filed (1) two affidavits: one from the Petitioner's sister, who made the Facebook post to which T.A. commented, and one from a private investigator who sought to contact the guidance counselors who were employed by the girls' school at the time of the disclosures; (2) the transcript of the controlled phone call in which the Mother confronted the Petitioner about disclosures of sexual abuse that J.A. made to the guidance counselor; and (3) portions of the trial transcript containing testimony from the girls and the Mother regarding the initial disclosure, and from the officer who assisted the Mother in the controlled phone call.

On January 29, 2025, the Petitioner filed a motion to compel a response from the State to his petition for writ of error coram nobis. He also filed a collection of Facebook comments, which included those he claimed to clearly and convincingly show his actual innocence. The two comments he focused on, made by T.A., provide: (1) “. . . The day my mother found out me and my younger sister were waiting for the [bus]. My oldest [sister] was already at school. So therefor [sic] my mother took her out of school and started the process of getting answers [emoji omitted],” and (2) “. . . We didn't go to school we pulled my sister out [emoji omitted] I'll testify till the day I die.”

On May 5, 2025, the State filed a response to the Petitioner's coram nobis petition. The State asked that the trial court dismiss the petition for three reasons: (1) the petition failed to meet the strict requirements to toll the statute of limitations for coram nobis relief; (2) the Facebook comments failed to establish the credibility needed for newly discovered evidence; and (3) the comments failed to clearly and convincingly demonstrate the Petitioner's actual innocence.

In a reply to the State's response, filed on May 20, 2025, the Petitioner presented the court with three grounds to reject the State's responsive arguments. He contended that the State's response misstated the argument he set forth in his petition and conceded the significance of the new evidence by failing to address the impact of the evidence on the disclosure narratives offered by the Mother and the victims. He further contended that the State misrepresented, and failed to challenge, the Mother's financial motive to fabricate the allegations of sexual abuse against the Petitioner. Finally, he asserted that the State failed to contest the Petitioner's claimed due process violation arising from the use of testimony known by the State to be false and abandoned its opportunity to argue the constitutional error was harmless beyond a reasonable doubt. Also on May 20, and in support of his reply to the State's response, the Petitioner filed a memorandum of law in support of his argument that the State waived or conceded his due process claim and committed a *Brady* violation. It is worth noting that, although the Petitioner cited *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) in his coram nobis petition, he did not explicitly argue a *Brady* due process violation in the petition.

A status hearing took place on May 29, 2025, at which the trial court heard argument from counsel representing both parties on the issues of whether the statute of limitations on the Petitioner's coram nobis petition could be tolled and whether the matter should proceed to an evidentiary hearing.

On June 16, 2025, the trial court entered an order dismissing the Petitioner's petition for writ of error coram nobis. The court found that the petition cited new evidence that was discovered after the expiration of the one-year statute of limitations on coram nobis petitions, and that the petition was filed within one year after the discovery of the new evidence. Nevertheless, the court further found that the Facebook comments did not provide the clear and convincing proof of actual innocence that is required to toll the statute of limitations period on coram nobis petitions.

On June 30, 2025, the Petitioner filed a motion for reconsideration requesting that the trial court reconsider its dismissal of his coram nobis petition. The record available to this court does not contain a decision from the trial court on the Petitioner's motion to reconsider.

It is from the trial court's June 16, 2025 order dismissing the coram nobis petition that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner contends: (1) the trial court improperly dismissed his petition; and (2) his due process rights were violated by the trial court. The State counters that the court did not err in dismissing the coram nobis petition and that the Petitioner's due process argument is without merit. We agree with the State.

A. Standard of Review

This court reviews a challenge to a trial court's decision on a coram nobis petition for an abuse of discretion. *Nunley v. State*, 552 S.W.3d 800, 823 (Tenn. 2018). “Whether due process considerations require tolling of a statute of limitations is a mixed question of law and fact, which we review de novo with no presumption of correctness.” *Nunley*, 552 S.W.3d at 830 (quoting *Harris v. State*, 301 S.W.3d 141, 145 (Tenn. 2010), *overruled on other grounds by Nunley v. State*, 552 S.W.3d 800 (Tenn. 2018)).

B. Dismissal of Petition for Writ of Error Coram Nobis

The Petitioner contends that the trial court erred when it dismissed his petition because it misapplied *Clardy*, 691 S.W.3d 390 in that it limited evidence of “actual

innocence” to only recantation evidence, failed to appropriately analyze the evidence and determine whether the Petitioner was actually innocent by failing to address and analyze his primary argument, and erred by making credibility determinations and factual findings instead of accepting the newly discovered evidence as true. The State counters that the lower court did not err in dismissing the petition because the trial court properly applied *Clardy* in finding that the newly discovered evidence did not establish the Petitioner’s actual innocence. The State further contends that the Petitioner’s arguments are based on a misunderstanding of the testimony presented at trial.

“Tennessee’s General Assembly enacted a statute permitting writs of error coram nobis to be used to challenge criminal convictions based on newly discovered evidence.” *Clardy*, 691 S.W.3d at 399. As held by this state’s Supreme Court, “a petition for writ of error coram nobis must be dismissed as untimely unless it is filed within one year of the date on which the judgment of conviction became final in the trial court.” *State v. Mixon*, 983 S.W.2d 661, 670 (Tenn. 1999). For purposes of obtaining coram nobis relief, a judgment of conviction becomes final either (1) thirty days after its entry, if post-trial motions are not filed, or (2) upon entry of an order disposing of a post-trial motion. *Id.* at 670; *See* Tenn. R. App. P. 4(c); *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996). In this case, the Petitioner’s judgment of conviction became final on April 13, 2012. He filed his coram nobis petition on December 17, 2024, which was beyond the one-year statute of limitations.

A statutory exception to the one-year statute of limitations on coram nobis petitions exists “only if the petitioner produces newly discovered evidence that would, if true, establish clearly and convincingly that the petitioner is actually innocent of the underlying crime of which he was convicted.” *Clardy*, 691 S.W.3d at 407; *See* T.C.A. § 40-30-117(a); T.C.A. § 40-30-110(f). “Actual innocence” as determined by the Supreme Court of Tennessee, “means nothing other than that the person did not commit the crime.” *Keen v. State*, 398 S.W.3d 594, 612 (Tenn. 2012). The tolling exception “is strictly limited to situations in which the petitioner brings to the coram nobis court new evidence that would, if considered credible, show he is actually innocent of the underlying crime.” *Clardy*, 691 S.W.3d at 403.

“[T]o toll the coram nobis statute of limitations, the new evidence of actual innocence, if credited, should leave the court with *no serious or substantial doubt* that the petitioner is actually innocent.” *Id.* at 408 (emphasis added). In analyzing whether a coram nobis petition filed beyond the one-year statute of limitations falls within the “actual innocence” exception to the time-bar,

the coram nobis court should first ascertain whether the petition cites new evidence discovered after expiration of the limitations period, and whether

the coram nobis petition shows it was filed no more than one year after the petitioner discovered the new evidence. If so, the coram nobis court should assume *arguendo* the veracity of the new evidence cited in the coram nobis petition, for the purpose of assessing whether to toll the statute of limitations. To grant tolling, the coram nobis court must find that the new evidence would, if credited, clearly and convincingly show that the petitioner is actually innocent of the underlying crime, i.e., that the petitioner did not commit the crime.

Id. at 409.

After review, we conclude that the trial court properly applied the *Clardy* analysis when it found that the Facebook comments made by T.A. did not clearly and convincingly establish the Petitioner's actual innocence. As such, the court properly dismissed the Petitioner's coram nobis petition. The court determined that the petition cited new evidence that was discovered after the expiration of the limitations period. It recognized that the petition was filed within one year after the Petitioner discovered the new evidence. The court also addressed whether the newly discovered evidence, if credited, clearly and convincingly showed that the Petitioner was actually innocent. In performing this step in the *Clardy* analysis, the court asked, "whether the Facebook comments show[ed] that the Petitioner did not commit these crimes." The trial court found:

[I]n the Facebook comments, [T.A.] did not retract her trial testimony that the Petitioner sexually assaulted her. At best, the Facebook comments address whether [T.A.] attended school on the day of the disclosure. There is no evidence, and the petition does not allege, that this day of disclosure was the actual day the crimes were committed. In short, whether [T.A.] attended school on the day of the disclosure is not germane to the issue of whether the crimes occurred. As best, these Facebook comments amount to impeachment evidence and the Petitioner concedes this point in the petition.

The court did not limit the evidence of "actual innocence" under *Clardy* to only recantation evidence, as the Petitioner argues on appeal. The court simply recognized that T.A. did not retract the allegations of abuse in the comments, and we agree. In fact, also included in the Facebook comments made by T.A. was her statement "There's no proving he didn't do it bc [sic] HE DID!" She further commented "The fact is that he is guilty." She called him a "child predator" in another comment.

The Petitioner next contends that the trial court failed to appropriately analyze the evidence and determine whether he was actually innocent. He specifically states that the court's order did not address his argument that the guidance counselor disclosure narrative

presented to the jury was false, as demonstrated by the newly discovered evidence (the Facebook comments). We agree that the court's order does not address the fact that, because the children did not go to school on the day of the disclosure, they could not have disclosed the abuse to their guidance counselor. This evidence, however, does not amount to evidence of the Petitioner's actual innocence. The trial testimony made clear to the jury that the guidance counselor disclosure narrative was false. Evidence that the girls did not go to school on the day of the disclosure is not evidence of "actual innocence" under these circumstances.

At trial, the police officer who helped the Mother with the controlled phone call in which she informed the Petitioner that J.A. disclosed sexual abuse to a guidance counselor at school testified that the officer suggested to the Mother that the Mother give that disclosure narrative and that the suggestion was false. Both children testified at trial that J.A. initially disclosed the abuse to the Grandfather. The Mother also testified that J.A. first disclosed the abuse to the Grandfather. Although the Mother, T.A., and J.A. offered inconsistent testimony about whether the Mother approached the children about the disclosure before they took the bus to school or after she picked them up early from school, they were consistent in testifying that J.A. made the initial disclosure to the Grandfather.

The Petitioner finally contends that the court made improper credibility determinations when it (1) categorized the Facebook posts as impeachment evidence; (2) claimed the posts addressed only whether the girls went to school on the day of the disclosure instead of acknowledging that the language of the posts makes clear neither J.A. nor T.A. went to school at all on that day; (3) disregarded a sworn affidavit from a guidance counselor who worked at the girls' school during the time of the disclosure; and (4) deemed the falsity of the disclosure narrative immaterial.

In mentioning the Facebook comments could be impeachment evidence "at best," the trial court saw some value to the newly discovered evidence and agreed with a statement made by the Petitioner in his coram nobis petition. Specifically, in his petition, he contended the newly discovered evidence "thoroughly impeached all three witness' testimony," and further wrote "the new evidence is not only impeachment evidence" As for the language of the posts themselves, it could be read as meaning the girls did not go to school at all on the day of the disclosure, or when considering the language in light of the testimony given at trial, it could be read as meaning the girls went to school but were picked up by the Mother soon after arriving. The posts do not unequivocally state the girls did not go to school at all on the day of the disclosure. Regarding the affidavit of the counselor, again, testimony at trial made clear the guidance counselor disclosure narrative was a false suggestion made to the Mother by a police officer for the purpose of conducting the controlled phone call. Therefore, whether a guidance counselor who worked at the girls' school during the time of the disclosure filed an affidavit stating the girls did not

make any sexual abuse disclosures to her is irrelevant. Also, as the State points out in its appeal brief, the Petitioner did not present the affidavit as newly discovered evidence in his petition. He identified only the two Facebook comments as newly discovered evidence.

Based on the analysis set forth above, we conclude the trial court did not abuse its discretion in finding that the two Facebook comments made by T.A. did not clearly and convincingly establish the Petitioner was actually innocent (i.e. that he did not commit the crimes) and subsequently dismissing his petition. The Petitioner is not entitled to relief on this issue.

C. Violation of Due Process

The Petitioner argues that the trial court violated his right to due process by dismissing his petition without adjudicating preserved federal claims—that the State violated due process by presenting testimony it knew or should have known to be false when it offered the guidance counselor disclosure narrative at trial, and that the State committed a *Brady* violation by withholding knowledge of the false disclosure narrative from the defense. According to the Petitioner, the State conceded a due process violation when it did not file a response to these arguments, which the Petitioner raised for the first time in his reply to the State’s response to his coram nobis petition. He maintains that the trial court’s failure to provide a state forum to adjudicate these preserved federal claims requires reversal and remand. The State counters that it did not concede a due process violation by not filing a response to the Petitioner’s reply. The State further counters that the court did not err in dismissing the petition without addressing the Petitioner’s federal constitutional claims because a coram nobis petition is not the proper avenue to raise such claims.

Our state’s supreme court has opined that “a petition for a writ of error *coram nobis* has long been subject to dismissal on the face of the petition, without discovery or an evidentiary hearing, and even prior to notification to the opposing party.” *Nunley*, 552 S.W.3d at 825 (Tenn. 2018) (emphasis in original). This means that the State’s silence in response to a coram nobis petition, or even in response to a reply filed by the Petitioner, does not amount to a concession of any issue raised in the petition or reply. We conclude that the State did not concede a due process violation by not filing a response to the Petitioner’s reply.

The Petitioner’s arguments that the trial court erred in dismissing his petition without considering his federal claims and providing a forum for their adjudication similarly fail.

The United State Supreme Court held, in *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194 (1963), “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” As for the relationship between a constitutional due process violation under *Brady* and coram nobis petitions, the Supreme Court of Tennessee has held:

that an error *coram nobis* proceeding is not the appropriate procedural vehicle for obtaining relief on the ground that the defendant suffered a constitutional due process violation under *Brady*. The appropriate procedural mechanism to seek relief for a *Brady* violation is a post-conviction proceeding.

Nunley, 552 S.W.3d at 819 (emphasis in original). Because a coram nobis petition is not the proper avenue to seek relief for a due process or *Brady* violation, we conclude that the trial court did not err in dismissing the petition without addressing the Petitioner’s federal claims and providing a state forum for the adjudication of those claims. The Petitioner is not entitled to relief on this issue.

III. Conclusion

After a thorough review of the record and relevant authorities, we affirm the coram nobis court’s judgment.

S/ ROBERT W. WEDEMEYER
ROBERT W. WEDEMEYER, PRESIDING JUDGE