

FILED

November 3, 2014

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Justice Ketchum, concurring:

There may be occasions after a prisoner's release when newly discovered facts, such as DNA, demonstrate the released prisoner's innocence. Under these circumstances, the released prisoner would still have a remedy under the writ of *coram nobis*.

Generally, a released prisoner may have his judgment of conviction reviewed by means of *coram nobis* when:

1. There were errors of fact relied upon in obtaining the conviction;
2. The facts were not apparent on the record and they affect the validity and regularity of the underlying proceeding;
3. The facts were unknown to the defendant or his/her lawyer at the time of the underlying proceedings, without fault on their part; and
4. The newly discovered facts, if known, would have prevented the judgment of conviction.

See, Franklin D. Cleckley, West Virginia Criminal Procedure, §II-508 (1994).