

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 03-151

Defendant's obligation to pay appellate costs when his criminal conviction is subsequently reversed pursuant to a writ of *error coram nobis*

QUESTION

Is a petitioner whose criminal conviction is reversed pursuant to a writ of *error coram nobis* obligated to pay previously-incurred costs arising from the direct appeal of his conviction?

OPINION

Yes, unless relieved of the obligation by the pertinent appellate court.

ANALYSIS

There is no Tennessee statute directly addressing how reversal of a conviction by means of a writ of *error coram nobis* affects a defendant's obligation to pay previously-incurred appellate court costs. The assignment of appellate costs in Tennessee is governed by Rule 40 of the Tennessee Rules of Appellate Procedure. The rule generally provides that costs are to be taxed in favor of the prevailing party, "[i]n all cases, however, the appellate court has the discretion to award costs in a manner other than that specified in this subdivision." Advisory Commission Comments to T.R.A.P. 40(a). Furthermore, any party to a suit may petition an appellate court to reconsider its assignment of costs. See T.R.A.P. 39(a) and 40(a).

Consequently, it is the opinion of this Office that a petitioner whose conviction is reversed pursuant to a writ of *error coram nobis* is obligated to pay previously-incurred costs of appeal unless he is relieved of his obligation by order of the pertinent appellate court.

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