

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON**

<b>PHILIP R. WORKMAN,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No. W2001-00881-CCA-R9-PD</b>
	)	<b>Shelby County</b>
<b>STATE OF TENNESSEE,</b>	)	
<b>Respondent.</b>	)	

**ANSWER IN OPPOSITION TO APPLICATION  
FOR PERMISSION TO APPEAL**

**INTRODUCTION**

Petitioner, Workman, has applied to this Court under Tenn.R.App.P. 9 and 10 for permission to initiate an interlocutory appeal of orders of the trial court in the above-styled error coram nobis proceeding. Specifically, Workman raises three issues, all of which were included in the trial court’s order granting Workman’s Rule 9 application: 1) whether the trial court has jurisdiction to enter orders in this case prior to the issuance of the mandate by the Tennessee Supreme Court and the filing thereof by the trial court clerk; 2) whether the trial court has authority to order production of witness statements 24 hours prior to such witness’ testimony, notwithstanding Tenn.R.Crim.P. 26.2; and 3) whether the trial court erred by entering an order on April 9, 2001, setting an April 23, 2001, hearing date on Workman’s petition for writ of error coram nobis. The State submits that the application should be denied; these issues are now either moot or are otherwise inappropriate for interlocutory appeal.

**STATEMENT OF FACTS**

For purposes of the instant application for permission to appeal, the State does not dispute

Workman's recitation of relevant facts, except as follows: on April 12, 2001, the Tennessee Supreme Court denied Workman's petition to rehear and the Court's mandate issued on the same date. Exs. 1, 2. On April 17, 2001, the mandate was filed by the trial court clerk. Ex. 3. On the same date, this Court entered an order staying the proceedings in the trial court pending disposition of Workman's application for permission to appeal, including the trial court's order setting a hearing date of April 23, 2001.<sup>1</sup>

### **REASONS AGAINST IMMEDIATE REVIEW**

#### Jurisdiction of the Trial Court

In the first issue raised by Workman, he contends that this Court should immediately review whether the trial court has jurisdiction to enter orders in this case prior to the issuance and filing of the Tennessee Supreme Court's mandate. While that mandate had not yet issued at the time Workman filed his application, it now has — the mandate issued on April 12, 2001. It was also filed by the trial court clerk on April 17, 2001. Pursuant to Tenn.R.App.P. 43(c), the matter has now been reinstated and subsequent proceedings may be conducted after ten days' notice. This issue, then, has been rendered moot and is therefore not an appropriate matter for immediate review. *See State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 192 (Tenn. 2000)(courts will decline to render advisory opinions).

#### Trial Court's Setting of a Hearing Date

In the third issue raised by Workman, he contends that this Court should immediately

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<sup>1</sup> On April 17, 2001, the trial court filed a petition for a writ of habeas corpus and a writ of certiorari of this Court's order. The State responds that, on April 17, 2001, the trial court indicated to both parties its intent to comply with the Court's order and refrain from conducting any further proceedings.

review whether the trial court erred when, on April 9, 2001, it set a hearing date of April 23, 2001. Workman argues that, due to other obligations, his counsel could not be prepared for a hearing on thirteen days' notice; nor could he secure his witnesses in such a short period of time. By virtue of this Court's order of April 17, 2001, staying the proceedings in the trial court, however, the April 23, 2001, hearing was not held. Upon disposition of the instant application, a new hearing date will need to be set. The bases for Workman's assertion of error, then, are now irrelevant. Accordingly, this issue has likewise been rendered moot and, therefore, inappropriate for immediate review.

#### Disclosure of Witness Statements

The sole remaining issue, then, involves the trial court's order that Workman produce any prior statements of Harold Davis at least 24 hours prior to his testimony.<sup>2</sup> The trial court entered this order pursuant to Tenn.R.Crim.P. 26.2 "to allow the State to be prepared to cross-examine and avoid unnecessary delay in the hearing." In support of his application for permission to appeal, Workman contends only that the trial court's order is contrary to law, namely, the provisions of Tenn.R.Crim.P. 26.2(a).

Workman's bare assertion that the trial court's order is contrary to Rule 26.2 is insufficient to warrant immediate review by this Court. His application is devoid of any demonstration of prejudice, much less irreparable injury, that will result from this order, thus necessitating immediate review; nor does it show that such review would prevent needless litigation or that the order would otherwise be unreviewable upon entry of final judgment. *See* Tenn.R.App.P. 9(a). Indeed, granting his application on this issue alone would itself engender

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<sup>2</sup> I copy of the subpoena is attached to the court's application.

needless litigation.

It is true enough that the Tennessee Supreme Court has stated, in dicta, that “neither state nor federal trial judges can require advance disclosure of statements.” *State v. Caughron*, 855 S.W.2d 526, 535 (Tenn. 1993), citing *United States v. Algie*, 667 F.2d 569 (6th Cir. 1982) and *State v. Taylor*, 771 S.W.2d 387, 391 (Tenn. 1989). Nevertheless, in nearly the same breath, the Court also “strongly recommend[ed] early production of statements of witnesses in order to expedite the trial of the case and avoid lengthy recesses during trial.” *Id.* at 536. *See also id.* at 549 (Daughtrey, J., dissenting)(advance production of witness statements often extolled as the “better practice”). Avoiding unnecessary delay was the precise purpose for the trial court’s order in this case, and the statements were ordered to be produced a mere 24 hours prior to the witness’ testimony. Immediate, interlocutory review of this issue pursuant to Rule 9 is not warranted. Nor can it be said that the trial court “has so far departed from the accepted and usual course of judicial proceedings as to require immediate review” under Rule 10.<sup>3</sup>

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<sup>3</sup> [REDACTED]

**CONCLUSION**

For the reasons advanced, Workman's application for permission to appeal should be denied.

Respectfully submitted,

PAUL G. SUMMERS  
Attorney General & Reporter

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MICHAEL E. MOORE  
Solicitor General

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served on the petitioner by forwarding same to Robert L. Hutton, Esq., Glankler Brown, PLLC, 1700 One Commerce Square, Memphis, Tennessee, 38103, on this, the \_\_\_\_\_ day of April, 2001.

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JOSEPH F. WHALEN  
Assistant Attorney General