

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

PHILIP R. WORKMAN v. STATE OF TENNESSEE

**Criminal Court for Shelby County
No. B-81209**

No. W2001-01920-CCA-R10-PD - Filed November 15, 2001

ORDER

On September 24, 2001, Capital Petitioner Philip R. Workman sought interlocutory review of oral rulings by the Shelby County Criminal Court, challenging the lower court's refusal (1) to apply Rules 3, 8 and 12 of the Tennessee Rules of Civil Procedure to the *coram nobis* proceeding, and (2) to order the State to submit a written answer to the Petitioner's discovery request pursuant to Rule 16, Tennessee Rules of Criminal Procedure. *See* Tenn. R. App. P. 10. By order entered September 28, 2001, this Court stayed resolution of Petitioner's Rule 10 applications in the above-styled matter pending resolution of Petitioner's Rule 11 application to the Tennessee Supreme Court in the case numbered W2001-01920-SC-S10-PD, finding "the issues contained in Petitioner's . . . Rule 10 applications to this Court are necessarily encompassed within his Rule 11 application to the Supreme Court."¹ On November 5, 2001, the Supreme Court denied Petitioner's application for permission to appeal this Court's August 10th order, which in effect returned jurisdiction of Petitioner's September 24th Rule 10 applications to this Court.

Since the filing of this Court's August 10, 2001, order/opinion, proceedings were held during which Petitioner complains (1) the trial court refused to compel the State to file a "fact-specific, point-by-point admission and/or denial of [P]etitioner's application for coram nobis relief," pursuant to Rules 3, 8, and 12 of the Tennessee Rules of Civil Procedure and (2) the trial court has not ordered the State to submit a written answer to the Petitioner's discovery request pursuant to Rule 16, Tennessee Rules of Criminal Procedure.

The record before this Court reveals that the State did, in fact, file a responsive answer to

¹On August 10, 2001, this Court entered an order in the above-styled matter granting Capital Petitioner Philip R. Workman's application for Rule 10 interlocutory review and finding that there is no right to the civil discovery process in a coram nobis proceeding. *See Philip R. Workman v. State*, No. W2001-01920-CCA-R10-PD (Tenn. Crim. App. at Jackson, Aug. 10, 2001), *application for permission to appeal filed*, (Tenn. Sept. 24, 2001), *perm. to appeal denied*, (Tenn. Nov. 5, 2001). Rather, this Court found that "discovery in a coram nobis proceeding is governed by Rule 16, Tennessee Rules of Criminal Procedure." *Id.*

the petition on August 2, 2001. Additionally, regarding discovery in the above-captioned matter, the trial court asked the prosecution whether the State has kept an “open file with the defense in this matter.” The prosecutor replied,

Your Honor, I think the defense basically has gotten our entire file, and then they also had access to our file at the end of the clemency hearing. We’ve added nothing to it in regards to experts, as regards to reports or anything else. So whatever we presented at the clemency hearing is all we – we have not prepared anything else, and our expert, Dr. Smith, has not prepared anything else. And as far as any Brady material, we are not aware of any Brady material since that time. And, like I said, Mr. Hutton actually got to come to my office and went through both boxes of that file. Since that time the only thing that’s been added to the file has been what has been filed in court here during the last few months that we’ve been waiting for the hearing. So there’s nothing in addition, under rule 16, which is very specific in what is discoverable, there is nothing else that we have that would comply with rule 16 that would be discoverable to the defense.

These proceedings were conducted in the trial court on August 13, 2001. Petitioner concedes that the evidentiary hearing in this matter has now been in progress in excess of two months. Additionally, we note that Petitioner’s Rule 11 application from this Court’s August 10, 2001, order, effectively removed this Court’s jurisdiction to expeditiously review the matters of the present Rule 10 applications.

We have examined the record before us and find that, although there has not been strict compliance with the applicable rules of both civil and criminal procedure, the trial court has not “so far departed from the accepted and usual course of judicial proceedings as to require immediate review.” *See* Tenn. R. App. P. 10(a)(1). Nor are we able to conclude that extraordinary review is “necessary for complete determination of the action on appeal.” *See* Tenn. R. App. P. 10(a)(2). Finally, with consideration of the progress of the evidentiary hearing and Petitioner’s legal responses/strategy regarding the proceedings, we conclude that the lower court’s substantial compliance with the applicable rules of procedure is insufficient to warrant Rule 10 review at this juncture absent a showing of prejudice to the Petitioner.

Since it does not appear to the Court that the issues raised by Petitioner are proper matters for Rule 10 Extraordinary Appeal consideration, it is **HEREBY ORDERED** that Petitioner’s respective Rule 10 applications are respectfully **DENIED**.

Costs are taxed to the State.

FOR THE COURT:

DAVID G. HAYES, JUDGE

JOE G. RILEY, JUDGE

JOHN EVERETT WILLIAMS, JUDGE