

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 26, 2013

Remanded on April 14, 2014

**COREY A. ADAMS**  
**v. TENNESSEE DEPARTMENT OF CORRECTIONS ET AL.**

**Appeal from the Chancery Court for Hickman County**  
**No. 12CV4694 Robbie T Beal, Judge**

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**No. M2013-00370-COA-R3-CV - Filed September 11, 2014**

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The Disciplinary Board of the Turney Center Industrial Complex convicted Petitioner of assault based upon his involvement in a gang stabbing of another inmate, the conviction was affirmed by the Commissioner of the Department of Correction. Petitioner then filed this common law writ of certiorari with the Chancery Court of Hickman County to challenge his conviction. The trial court granted the writ and the administrative record was filed with the trial court. Thereafter, on motion of the respondents, the trial court denied relief to Petitioner on the grounds that the record demonstrated that the disciplinary board had not acted illegally, arbitrarily, or exceeded its jurisdiction, and that Petitioner's due process rights were not violated. Finding no error, we affirmed. Petitioner then filed a Tenn. R. App. P. 11 application to the Supreme Court, which granted the application and remanded to this court with instructions to address the issue of whether the trial court "improperly dismissed the writ of certiorari without first disposing of [Petitioner's] pretrial motions." After requesting supplemental briefs on the issue, we have concluded that the trial court erred in dismissing the writ of certiorari without first disposing of Petitioner's motions. We reach this decision because we are unable to conclude that the outcome of the petition could not have been affected had the trial court granted some or all of the motions. Accordingly, we reverse the judgment of the trial court and remand this matter for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Reversed and Remanded**

FRANK G. CLEMENT, JR., P. J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, J.J., joined.

Corey A. Adams, Wartburg, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter, Joseph Whalen, Solicitor General, Shauna Jennings, Assistant Attorney General, Nashville, Tennessee, for the appellees, Tennessee Department of Correction, Michael Allen, Dwight A. Barbee, Charles Bass and Derrick D. Schofield.

## OPINION

On December 4, 2011, at approximately 6:30 p.m., inmate Demichael Moore was assaulted and stabbed twenty-one times by five inmates who are members of the 52 Hoover Gangster Crips. One of the alleged attackers was Corey A. Adams, aka “Cocaine”, (“Petitioner”).<sup>1</sup> Charges were filed and a hearing occurred on December 19, 2011, at which time evidence was presented including a confidential informant’s statement (Form CR-3510 - Contemporaneous Record of Confidential Informant Reliability), that was certified as reliable by Sergeant Middleton; and photographs and audio tape recordings of statements were introduced. Petitioner also made statements at the hearing denying that he assaulted inmate Moore in any fashion. Following the hearing, Petitioner was convicted of the Class A offense of assault on inmate Moore. The disposition included a twelve month restriction on receiving packages, 30 days “PST”, prisoner sentence reduction credits of six months, and a two year extension of his sentence. The conviction was affirmed by the Commissioner of the Department of Correction, Derrick Schofield.

Petitioner appealed his conviction to the Chancery Court of Hickman County naming the Tennessee Department of Correction and numerous individuals in their official capacities as Respondents. Respondents subsequently filed notice that they had no opposition to granting the petition for writ of certiorari. An order issuing the writ was entered on June 1, 2012, and the certified administrative record was filed with the trial court in August 2012. Thereafter, Respondents filed a motion for judgment on the record. The trial court subsequently reviewed the record and entered judgment denying relief to Petitioner on the grounds the record demonstrated that the disciplinary board had not acted illegally, arbitrarily or exceeded its jurisdiction, and that Petitioner’s due process rights were not violated.

This court rendered its opinion in this matter on November 5, 2013. *See Corey A. Adams v. Tennessee Department of Corrections et al.*, No. M2013-00370-COA-R3-CV, 2013 WL 5964330 (Tenn. Ct. App. Nov. 5, 2013). By order entered on April 14, 2014, the Supreme Court granted Petitioner’s Tenn. R. App. P. 11 application for permission to appeal

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<sup>1</sup>The other “Crips” accused of assaulting and stabbing inmate Moore were inmates Susej Riddle, aka “Buck”; Rickery Carr, aka “Gutter”; Jonathan Lawrence, aka “Cash”; and Juan Collier, aka “Young Duece.”

and remanded the case to this court to consider the issue of whether the trial court “improperly dismissed the writ of certiorari without first disposing of [Petitioner’s] pretrial motions.” Our discussion of that issue follows.

#### ANALYSIS

Petitioner filed this petition for writ of certiorari on March 6, 2012. After Respondents filed a notice of no opposition to granting the petition for writ of certiorari, an order issuing the writ was entered. Thereafter Petitioner filed a motion for leave to file an amended complaint and a motion for appointment of counsel. Petitioner also filed interrogatories directed to all respondents. Petitioner subsequently filed a motion seeking an order to compel discovery and a pleading titled “Leave to Take Deposition of Prisoner.” Respondents opposed Petitioner’s motions to compel discovery and for leave to take depositions.

Thereafter, Respondents filed a motion for judgment on the record. The trial court subsequently entered an order denying Petitioner relief. This appeal followed and the sole issue for this court to consider on remand is whether the trial court erred by dismissing the writ of certiorari without first disposing of Petitioner’s motions.

It goes without saying that the better practice is for a trial court to rule on pending motions prior to disposing of cases on the merits. Such an omission gives the impression that a litigant is being ignored, but it also makes appellate review more difficult without an order specifying reasons for a trial court’s grant or denial of a motion. *See Logan v. Winstead*, 23 S.W.3d 297, 303 (Tenn. 2000).

The *Logan* case was an appeal from a prisoner’s pro se action for legal malpractice against the attorney who represented him in criminal court on the charges underlying his sentence. *Id.* at 297. The defendant, Mr. Winstead, moved for summary judgment. *Id.* at 303. Four days later, Mr. Logan filed a motion requesting that the matter be held in abeyance until his release from prison and asked that “summary judgment be dismissed until discovery is completed.” *Id.* The trial court never ruled upon Mr. Logan’s abeyance motion, and three months later, granted Mr. Winstead summary judgment upon the record without oral argument. *Id.* The Supreme Court found the omission error, explaining:

As previously explained herein, incarcerated plaintiffs do not have an absolute right to have civil litigation held in abeyance until they are released from prison. However, such plaintiffs are entitled to have requests for abeyances considered and determined under the appropriate legal standards. There is nothing in the record of this appeal to indicate that the trial court gave any consideration to Mr. Logan’s request for an abeyance. Under these

circumstances, the trial court erred. Therefore, we reverse the judgments of the trial court and the Court of Appeals which granted summary judgment to Mr. Winstead. We remand this case to the trial court to consider, pursuant to the guidelines set forth in this opinion, whether Mr. Logan's request for an abeyance should be granted. If, in its discretion, the trial court determines that an abeyance is not appropriate, the trial court may deny Mr. Logan's request for an abeyance and rule upon Mr. Winstead's motion for summary judgment after affording Mr. Logan sufficient time to respond to the summary judgment motion.

*Id.* at 303 (footnote omitted).

Although a trial court's failure to rule on a pending motion may be error, that error may be harmless depending on the circumstances. One such circumstance is whether the court's failure to rule on a pending motion possibly affected the outcome of the litigation. *See Johnson v. South Cent. Correctional Facility Disciplinary Bd.*, No. M2012-02601-COA-R3-CV, 2013 WL 4803565, at \*8 (Tenn. Ct. App. Sep. 6, 2013). Under circumstances where the pending motions would not have affected the outcome, the oversight, or failure to rule on pending motions, has been considered harmless error. *Id.* at \*10. As the court in *Johnson* noted, to remand a case to the trial court where the motions could not have affected the outcome would be an exercise in futility and a waste of judicial economy." *Id.* We shall, therefore, consider whether the trial court's failure to rule on Petitioner's motions could have affected the outcome of his writ of certiorari.

In his brief, Petitioner asserts that by filing the motions to compel discovery and for leave to amend the complaint he was attempting to provide additional evidence and exhibits to establish that the disciplinary board acted arbitrarily, illegally, or capriciously. He states that the exhibits attached to the proposed amended complaint "were letters-affidavits from the victim, some introduced before the disciplinary hearing and some after, all of which noted [Petitioner] as not having committed the offense and attempts by the victim to inform the officials as to such." As for the deposition of another inmate, who was the victim, Petitioner states "the deposition of the victim was sought to establish [Petitioner's] innocence and the victim having informed officials of such." In his interrogatories to Respondents, he contends he was seeking to obtain, *inter alia*, video footage of the incident, and establish that there was no verification by the disciplinary board that confidential informant form CR-3510 was completed, which would be a violation of its own policies.

Although judicial review under a common-law writ of certiorari is typically limited to the record made before the board or agency, the trial court may permit the introduction of additional evidence on the issue of whether the board or agency exceeded its jurisdiction, or

acted illegally, capriciously, or arbitrarily. *Hunter v. Metropolitan Bd. of Zoning Appeals*, No. M2002-00752-COA-R3-CV, 2004 WL 315060, \*2 (Tenn. Ct. App. Feb. 17, 2004) (citing *Cooper v. Williamson County Bd. of Educ.*, 746 S.W.2d 176, 179 (Tenn.1987); *Davison v. Carr*, 659 S.W.2d 361, 363 (Tenn. 1983)).

Petitioner insists the additional evidence he sought to discover would be germane to the issue of whether the disciplinary board exceeded its jurisdiction, or acted illegally, capriciously, or arbitrarily. Respondents did not address this issue or the lack of merit of Petitioner's discovery requests in their initial Appellees' Brief. On remand from the Supreme Court, this court, by order, expressly invited Respondents to address this issue. In their supplemental brief filed on August 22, 2014, Respondents insist the failure to rule on Petitioner's pending motion was harmless error. Specifically, they assert that all of the motions filed by Petitioner were to aid him in introducing new evidence and/or exhibits that were never a part of the record before the Disciplinary Board of the Turney Center Industrial Complex, to challenge the correctness of the board's decision. Respondents contend the admission of new evidence and/or exhibits generally was not appropriate due to the narrow scope of review in writs of certiorari.<sup>2</sup> However, in Respondents' less than four page discussion of this issue, they never address any of Petitioner's specific reasons for seeking discovery or to submit exhibits via an amended complaint, other than citing to precedent that addresses the narrow scope of review in writs of certiorari and authority that generally deals with the concept of error and harmless error. In fact, Respondents do not specifically address why the evidence that may be obtained through the requested discovery sought by Petitioner would not be germane to the issue of whether the disciplinary board exceeded its jurisdiction, or acted illegally, capriciously, or arbitrarily, and, thus, could not affect the outcome of this litigation.

While, the authorities cited by Respondents are generally relevant to the issue at bar, they do not aid us in determining whether the trial court's failure to rule on Petitioner's

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<sup>2</sup>The limited court review of prison disciplinary board proceedings was explained in *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994) as being "very narrow."

It covers only an inquiry into whether the Board has exceeded its jurisdiction or is acting illegally, fraudulently, or arbitrarily, *Yokley v. State*, 632 S.W.2d 123 (Tenn. Ct. App. 1981). Conclusory terms such as "arbitrary and capricious" will not entitle a petitioner to the writ. *Id.* At the risk of oversimplification, one may say that it is not the correctness of the decision that is subject to judicial review, but the manner in which the decision is reached. If the agency or board has reached its decision in a constitutional or lawful manner, then the decision would not be subject to judicial review.

*Powell*, 879 S.W.2d at 873.

pending motions to compel discovery and file an amended complaint with exhibits would constitute harmless error instead of reversible error.

Petitioner insists the additional evidence he sought to discover and to introduce would establish that the disciplinary board exceeded its jurisdiction, or acted illegally, capriciously, or arbitrarily. Based on the record before us and Respondents' failure to identify specific reasons why the discovery sought could not lead to the discovery of admissible evidence, we are unable to conclude that the outcome of this litigation could not have been affected had the trial court ruled in favor of petitioner on some or all of the pending motions. Accordingly, the judgment of the trial court is reversed and this matter is remanded for further proceedings.<sup>3</sup>

### IN CONCLUSION

The judgment of the trial court is reversed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed Appellees, Respondents.

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FRANK G. CLEMENT, JR., JUDGE

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<sup>3</sup>As our Supreme Court stated in *Logan v. Winstead*, 23 S.W.3d 297, 303 n.6 (Tenn. 2000), our decision should not be read as expressing an opinion on the merits of Petitioner's motions or the ultimate disposition of his petition.