

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 October 26, 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." This Court, however, refused to stay proceedings at the trial level.

The next scheduled hearing before the Shelby County Criminal Court is November 5, 2001. Petitioner now moves this Court to grant a stay of all trial court proceedings pending resolution of the Rule 10 applications presently stayed before this Court. In support of his motion, Petitioner alleges "[i]f the proceedings in the trial court are not stayed, [P]etitioner will be required to provide the state discovery not allowed under Rule 16 of the Tennessee Rules of Criminal Procedure. Additionally, [P]etitioner will have been required to go forward without the benefit of an answer filed by the state, specifically admitting or denying which facts are contested."

Absent a stay, the filing of an interlocutory appeal does not divest the trial court of jurisdiction to continue proceedings. A stay of trial court proceedings shall be granted by the appellate court, pending resolution of interlocutory appeal, only upon a showing of extraordinary need or that the party seeking interlocutory relief will be unduly prejudiced absent a stay of the proceedings. Additionally, the Court entertaining a motion for a stay should consider whether the interlocutory appeal is taken in good faith, whether the appeal is made for purposes of delay and whether the issues raised therein will have a substantial effect on the outcome of the proceedings. The court should also resolve whether the decision to grant or deny the stay will preclude review of the issue when the final judgment is entered.

After consideration, this Court is of the opinion that a stay in the instant proceedings is not necessary and that the failure to issue said stay will not unduly prejudice the Petitioner in this matter. Accordingly, Petitioner's motion for issuance of a stay is hereby DENIED.

FOR THE COURT:

DAVID G. HAYES, JUDGE

**(HAYES, RILEY, WILLIAMS, JJ.)
PER CURIUM**