IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. LEE HALL, a/k/a LEROY HALL, JR.

Criminal Court for Hamilton County
No. 222931

No. E1997-00344-SC-DDT-DD

NOT FOR PUBLICATION

ORDER

In April 1991, LeRoy Hall, Jr., now known as Lee Hall, threw a "gas bomb" on the victim, Traci Crozier, while she was lying in the front seat of her car. The victim received third degree burns to more than ninety percent of her body and died several hours later in the hospital. Mr. Hall eventually admitted responsibility but claimed he only intended to burn her car. A Hamilton County jury convicted Mr. Hall of first degree premeditated murder and aggravated arson. On March 11, 1992, the jury sentenced Mr. Hall to death. Almost twenty-two years ago, this Court affirmed Mr. Hall's convictions and his sentence of death. *State v. Hall*, 958 S.W.2d 679 (Tenn. 1997), *cert. denied*, *Hall v. Tennessee*, 524 U.S. 941 (1998). Mr. Hall's pursuit of post-conviction relief was unsuccessful. *Hall v. State*, No. E2004-01635-CCA-R3-PD, 2005 WL 2008176 (Tenn. Crim. App. Aug. 22, 2005), *perm. app. denied* (Tenn. Dec. 19, 2005).

Mr. Hall subsequently sought relief from his conviction and sentence of death in federal court. *Hall v. Bell*, No. 2:06-CV-56, 2010 WL 9089933, at *1 (E.D. Tenn. Mar. 12, 2010). The federal district court denied his petition for a writ of habeas corpus but granted him a certificate of appealability as to select claims. *Id.* at *64. Mr. Hall filed a pro se motion to waive any further appeals and to proceed with his execution. *Hall v. Bell*, No. 2:06-CV-56, 2011 WL 4431100, at *1 (E.D. Tenn. Sept. 22, 2011). Following a hearing on Mr. Hall's competency to waive his appeals, the federal district court granted Mr. Hall's motion. *Id.* at *6.

On October 3, 2013, the State filed a motion to set an execution date asserting that Mr. Hall had completed his standard three-tier appeals process. This Court granted the State's motion and scheduled the execution for January 12, 2016. On April 10, 2015, the

Court vacated Mr. Hall's execution date pending the outcome of the litigation involving the lethal injection protocol. This litigation concluded in May 2019. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied sub nom. West v. Parker*, 138 S.Ct. 476 (Nov. 27, 2017), and *cert. denied sub nom. Abdur'Rahman v. Parker*, 138 S.Ct. 647 (Jan. 8, 2018), *reh'g denied*, 138 S.Ct. 1183 (Feb. 26, 2018); *Abdur-Rahman et al v. Parker*, 558 S.W.3d 606 (Tenn. 2018), *cert. denied sub. nom. Zagorski v. Parker*, 139 S.Ct. 11 (Oct. 11, 2018), and *cert. denied sub. nom. Miller v. Parker*, 139 S.Ct. 626 (Dec. 6, 2018), *cert. denied* 139 S.Ct. 1533 (May 13, 2019) (J. Sotomayor dissenting). Under the provisions of Tennessee Supreme Court Rule 12(4)(E), the Court sua sponte re-scheduled Mr. Hall's execution for December 5, 2019.

On October 17, 2019, Mr. Hall filed three pleadings in Hamilton County Criminal Court seeking to adjudicate what he characterized as "structural constitutional error" based on "newly discovered evidence" that a juror in Mr. Hall's 1992 trial recently admitted bias toward him at the time of trial. Mr. Hall pursued three alternative avenues of relief: (1) a petition for writ of error coram nobis; (2) a motion to reopen post-conviction proceedings; and (3) a second petition for post-conviction relief. *See* Pleadings, *Hall v. State*, Nos. 308969, 222931, 308968 (Hamilton Cnty. Crim. Crt. Oct. 19, 2019). By order dated November 6, 2019, the trial court summarily dismissed the first two pleadings. Order at 2, *Hall v. State*, Nos. 308969, 222931, 308968 (Hamilton Cnty. Crim. Crt. Nov. 6, 2019). As to the third pleading, the court recognized that the post-conviction statute limits a petitioner to a single post-conviction petition; however, the court conducted a hearing to determine whether the "second" post-conviction petition should nonetheless be considered on due process grounds. *Id.* at 14. After a hearing on November 14, 2019, at which the court heard testimony from the juror and three investigators from the Post-Conviction Defender's Office, the trial court dismissed the second post-conviction petition. Mr. Hall's subsequent motion to reconsider was denied.

On November 6, 2019, Mr. Hall filed (1) an application for permission to appeal the trial court's denial of his motion to reopen his petition for post-conviction relief; and (2) a notice of appeal of the trial court's dismissal of his petition for a writ of error coram nobis. On November 26, 2019, Mr. Hall filed a notice of appeal of the denial of his second petition for post-conviction relief. By order dated November 8, 2019, the Court of Criminal Appeals dismissed the application for permission to appeal. Order, *Hall v. State*, No. E2019-01977-CCA-R28-PD (Tenn. Crim. App. Nov. 8, 2019). The appeals in the remaining two cases are pending at this time in the Court of Criminal Appeals. *See Hall v. State*, Nos. E2019-01978-CCA-R3-ECN (error coram nobis) and E2019-02094-CCA-R3-PD (second post-conviction petition).[1]

[1] On December 2, 2019, Mr. Hall filed a "Second Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus" along with a "Motion for Stay of Execution" in the United States District Court for the

On November 28, 2019, Mr. Hall filed a motion to stay his scheduled execution pending his appeals in these collateral challenges. Tennessee Supreme Court Rule 12(4)(E) provides that this Court "will not grant a stay or delay an execution date pending resolution of collateral proceedings in state court *unless the prisoner can prove a likelihood of success on the merits of that litigation*." Tenn. Sup. Ct. R. 12(4)(E) (emphasis added). "In order to establish a likelihood of success on the merits of a claim, a plaintiff must show more than a mere possibility of success." *State v. Irick*, 556 S.W.3d 686, 689 (Tenn. 2018) (quoting *Six Clinics Holding Corp., II v. Cafcomp Sys.*, 119 F.3d 393, 402 (6th Cir. 1997)). Accordingly, we examine the pending appeals to determine whether Mr. Hall has satisfied this standard.

The predominant argument underlying Mr. Hall's appeals is that due process requires that he be permitted to fully litigate his juror-bias claims through at least one of the three procedural vehicles he pursued in the trial court. Thus, our analysis begins by examining the nature and scope of each statutory vehicle.

Writ of Error Coram Nobis

As noted, Mr. Hall filed a petition for writ of error coram nobis and requested an evidentiary hearing. Tennessee Code Annotated section 40-26-105 provides that:

> (b) The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

Tenn. Code Ann. § 40-26-105(b) (2012). The writ of error coram nobis is an "extraordinary procedural remedy." *State v. Nunley*, 552 S.W.3d 800, 816 (Tenn. 2018)

Eastern District of Tennessee. *See* Pet. for Habeas Corpus and Mot. for Stay of Execution, *Hall v. Mays*, No. 1:19-cv-00341-DCLC-CRW (E.D. Tenn. Dec. 2, 2019). On December 3, 2019, Mr. Hall filed a pleading in the Court of Criminal Appeals asking the intermediate court to reconsider its prior dismissal of his application for permission to appeal the trial court's denial of his motion to reopen post-conviction proceedings. App. Perm. Appeal, *Hall v. State*, No. E2019-02120-CCA-R28-PD (Tenn. Crim. App. Dec. 3, 2019).

(quoting *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999)). "[N]either the United States Constitution nor the Tennessee Constitution provides a criminal defendant with a constitutional right to error coram nobis relief." *Id.* at 817 (quoting *Frazier v. State*, 495 S.W.3d 246, 248 (Tenn. 2016)). In fact, the Court has held that error coram nobis is not a vehicle for raising constitutional claims. *See id.* at 819-20.

Notably, among other requirements, the statute contemplates "newly discovered evidence" relating to "matters . . . litigated at the trial." *Id.* at 817; Tenn. Code Ann. § 40-26-105(b). In dismissing the petition, the trial court reasoned that coram nobis relief has been limited to cases involving newly discovered evidence of actual innocence. *Id.* at 829-31. In *Frazier v. State*, the Court explained that the "litigated at the trial" language found in the statute "refers to a contested proceeding involving the submission of evidence to a fact-finder who then must assess and weigh the proof in light of the applicable law and arrive at a verdict of guilt or acquittal." 495 S.W.3d 246, 250 (Tenn. 2016). In the instant case, the alleged "newly discovered evidence" or "facts" relate to whether a juror was biased against Mr. Hall and is being submitted to support a purported constitutional error rather than guilt or innocence. Indeed, Mr. Hall makes no claim of actual innocence in his filings. As a result, we agree that the error coram nobis statute is not a proper vehicle to bring such a claim.

Motion to Reopen Post-Conviction Proceedings

Mr. Hall also filed a motion to reopen his original post-conviction proceedings. Pursuant to Tennessee Code Annotated section 40-30-117:

> (a) A petitioner may file a motion in the trial court to reopen the first post-conviction petition only if the following applies:
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> > (1) The claim in the motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. The motion must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court establishing a constitutional right that was not recognized as existing at the time of trial; or
> >
> > (2) The claim in the motion is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

> (3) The claim asserted in the motion seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the motion must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid; and
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> (4) It appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced.

Tenn. Code Ann. § 40-30-117. Mr. Hall acknowledges that his motion to reopen does not fall within any of these categories. The trial court dismissed the motion, finding no authority that would permit the court to expand these categories. We again agree that this statutory vehicle was foreclosed by the limitations placed on a motion to reopen by the General Assembly.

Second Post-Conviction Petition

The final vehicle pursued by Mr. Hall was a second post-conviction petition. Tennessee Code Annotated section 40-30-102 specifically provides that:

> This part contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed. A petitioner may move to reopen a post-conviction proceeding that has been concluded, under the limited circumstances set out in § 40-30-117.

Tenn. Code Ann. § 40-30-102(c) (2011). By its plain language, the statute limited the petitioner to a single post-conviction petition subject only to a motion to reopen under the enumerated circumstances. Mr. Hall was not entitled to bring a second post-conviction petition, and the trial court would have been warranted in summarily dismissing the petition.

Although the trial court correctly observed that Mr. Hall's alleged constitutional

claim was not encompassed by any of the three statutory vehicles, the court nonetheless recognized the gravity of the procedural posture of Mr. Hall's case. Citing due process concerns, the trial court permitted Mr. Hall to present evidence on the juror-bias claim raised in his second post-conviction petition. The court explained that either the evidence would be used to rule on the merits of the second petition or the evidence would become an "offer of proof" to facilitate appellate review. To that end, the trial court conducted a hearing to allow Mr. Hall to present his proof. Although the court ultimately determined that the second post-conviction petition was barred by Tennessee Code Annotated section 40-30-102(c), Mr. Hall was given the opportunity to present his juror-bias claim.

Mr. Hall complains that this opportunity was inadequate and that due process requires expansion of one of the statutory avenues to allow him to "fully litigate" his last-minute juror-bias claim. Thus, in assessing the likelihood of success on the merits, we further examine Mr. Hall's juror-bias claim.

The record indicates Mr. Hall's counsel was aware of this juror during the original post-conviction time frame. However, investigators from counsel's office chose not to contact the out-of-state juror, noting their preference to show up unannounced at a juror's residence rather than making contact by telephone or correspondence. Investigators eventually made contact with the juror in 2014. Yet, at the November 14, 2019, hearing, none of the investigators recalled asking the juror about the domestic violence issues now being challenged. Mr. Hall's counsel began investigating the recent claim in late September 2019, when investigators contacted the juror at her home and were informed by her of the instances of domestic violence in her past. The information gleaned from this interview has been characterized by Mr. Hall as "newly available evidence" that serves as the basis for the instant juror-bias claim.[2]

Mr. Hall claims the juror failed to disclose her past domestic violence when asked several questions on the jury questionnaire and in voir dire. He adds that the juror claimed to be biased against Mr. Hall and remarked that she "hated" him because his testimony evoked her own painful memories from her first marriage. Mr. Hall describes the violation as "constitutional error" which requires Mr. Hall's convictions and sentence to be vacated.

Indeed, both the United States and the Tennessee Constitutions guarantee a criminal defendant the right to a trial by an impartial jury. *Smith v. State*, 357 S.W.3d 322, 347 (Tenn. 2011) (citing U.S. Const. amend. VI; Tenn. Const. art. I, § 9). A juror's

[2] In addressing the merits of this claim, we have chosen not to go into the significant issue regarding the timeliness of the assertion of this claim based on the prior strategic decisions made by counsel for Mr. Hall. Indeed, this matter quite likely could have been decided on that issue alone. However, we have decided to go beyond that issue.

"failure to disclose information in the face of a material question reasonably calculated to produce the answer or false disclosures give rise to a presumption of bias and partiality." *Id.* at 348. A question is "reasonably calculated" to produce an answer if "a reasonable, impartial person would have believed the question, as asked, called for juror response under the circumstances." *State v. Akins*, 867 S.W.2d 350, 356 n.13 (Tenn. Crim. App. 1993). If a defendant establishes a presumption of bias, the State may overcome the presumption by an absence of actual prejudice or actual partiality. *Id.* at 357.

Thus, we first consider whether the juror in question failed to disclose or gave false disclosures. As the trial court noted, the juror was not asked any questions about domestic violence during individual voir dire. The judge trying the case made the following remarks to the potential jurors:

> Now we're going to ask you some questions as a group, and if any of these things apply to you, then raise your hand. This is our time to talk together as far as talking with the Court or with the attorneys. If any of these questions apply to you, please let us know and please be frank in your answers, as you have done the last couple of days. And, as we said earlier, ladies and gentleman, it's not an attempt in any way to embarrass you, to delve into your personal lives, but to find out if there is anything that would influence your thinking, because what we need in this case, ladies and gentleman, is a jury that will be only influenced by what you hear in this courtroom throughout the trial of the case. If there is a question that's asked of you and you would like to respond, but you feel that the question – it may be somewhat embarrassing for you to answer that question in front of all the other jurors, if you'll just raise your hand, if you'll let the Court know, then we will take that up outside the presence of the other jurors. Sometimes that happens in which we're trying cases involving sexual assault or sometimes in homicide cases. So please let the Court know.

The judge further explained to the panel:

> Also, I'm going to ask you – the questions this will be directed primarily to those of you seated in the jury box and in front of the jury box, but they will also apply to you all, so please listen carefully, because if some of these people are excused and you step into the jury box, then those same questions will apply to you, and hopefully we won't have to repeat anything. So be thinking about them, and when you're called into the jury box I'll ask you if any of those questions apply to you.

During initial questioning by defense counsel, counsel asked the following

question:

> Now, another thing that I need to ask about – and I'm not asking for a response right now. Of course, I'm addressing this only to you ladies and gentleman here. One of the things that I'm curious about – and if there is something in your background or someone close to you in that background that you are aware of that would in any way possibly affect you, I'd ask you just to raise your hand, and we'll take it up at a later time. *That has to do with domestic violence.* Has anyone on this prospective jury had any kind of occasion or experience with domestic violence, either with a spouse, a girlfriend, a boyfriend, or anything of that nature *that would in any way possibly affect or influence you to the point where it would maybe compromise you to be able to render a fair and impartial verdict?* If there's anyone like that, please let me know by showing a hand and we can talk about that at some other time. Okay. (Emphasis added.)

After the juror in question was called into the jury box, the trial judge asked the following questions:

> Okay, those of you seated in front of the jury box, did you hear the questions that were asked either by the Court or counsel for either side? Would your answers be any different from any of those given previously or do any of those questions apply to you in particular, such as you'd have some response?
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> . . .
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> Did all of you hear the questions that were asked earlier of the prospective jurors? Do any of those things apply particularly to you, do you have any comments or anything that you need to say about any of those things? Do you know any reason why you cannot listen to the evidence in this case and apply it to the law and upon the evidence and the law, and only the evidence and the law, arrive at a verdict that would be fair and impartial to both the state and the defense in this case?

The juror did not respond to these questions by the trial judge.

At the hearing on the second motion for post-conviction relief, the juror was asked why she checked "no" in response to the question on the jury questionnaire of whether she had been the victim of a crime. The juror explained that she did not consider herself a victim at the time, adding there was no such thing as "date rape" in 1969 and that she

did not know the term "domestic abuse." In another instance, the juror indicated "no" when asked if she had contacted the authorities to report a crime. The juror explained that she had called the police on her first husband when she worried he was driving while intoxicated. However, significantly, she did not testify that she called the police on him for any alleged act of domestic violence. Additionally, the juror was asked whether she was "biased" against Mr. Hall as stated in her earlier declaration or had remarked that she "hated" Mr. Hall. The juror did not recall using the term "bias" in the declaration and added that she was not biased against Mr. Hall. She admitted that her memories with her first husband came back when Mr. Hall testified but that she considered it life experience not bias. She stated she had a "bad thought" during the testimony about Mr. Hall stalking the victim; however, she described the thought as fleeting.

The trial judge accredited the juror's testimony and concluded Mr. Hall failed to establish the juror was prejudiced against him at the time of trial. The court found that the juror did not attempt to deceive the court or counsel and that any nondisclosure was unintentional. The court also found that none of the questions asked of this juror were reasonably calculated to elicit a response that would have disclosed the juror's past domestic abuse. The "most relevant question" cited by Mr. Hall's counsel was the question by defense counsel during voir dire as to whether past exposure to domestic violence would affect or influence the juror to the point the juror could not return a fair and impartial verdict. The trial court found the juror answered this question truthfully because her past domestic violence did not leave the juror unable to be fair and impartial at the time it was asked, particularly in light of the juror's subsequent happy marriage that helped her overcome any residual feelings about her first marriage. The trial court found no presumption of prejudice under *Akins* and its progeny. Having reviewed the transcript of the hearing, we conclude the evidence does not preponderate against the trial court's findings.[3]

Mr. Hall advances additional arguments about constitutional error, equal protection violations, and the inadequacy of his hearing, primarily relying on *Faulker v. State*, W2012-00612-CCA-R3-PD, 2014 WL 4267460 (Tenn. Crim. App. Aug. 29, 2014).[4] In *Faulkner*, the Court of Criminal Appeals reversed the defendant's convictions

[3] The dissent claims that the trial court's findings "reveal the practical difficulties in bringing these issues to light." To the contrary, the trial court's findings demonstrate that counsel for Mr. Hall strategically did not pursue this issue in the manner counsel for Mr. Sexton and Mr. Rollins chose to do in those cases.

[4] The dissent asserts that the Court of Criminal Appeals has granted relief in two cases involving the same constitutional issue, citing *Sexton v. State*, No. E2018-01864-CCA-R3-PC, 2019 WL 6320518 (Tenn. Crim. App. Nov. 25, 2019) and *Rollins v. State*, No. E2010-01150-CCA-R3-PD, 2012 WL 3776696 (Tenn. Crim. App. Aug. 31, 2012). As with *Faulkner*, both *Sexton* and *Rollins* concern timely post-conviction proceedings and are therefore procedurally distinguishable. Rather, relief was not granted

due to a juror's false statements about past domestic violence. The juror answered "no" when specially asked on a jury questionnaire if she had been the victim of domestic violence. Further, the juror did not respond when asked directly about any prior experience with domestic violence. She gave additional false statements about her criminal history. *Id.* at *78-79. The trial court properly distinguished the instant case from *Faulkner*. We likewise reject Mr. Hall's suggestion that granting relief to Mr. Faulkner and affording him no relief would amount to an equal protection violation. In addition to different facts, the cases are not procedurally on all fours. Accordingly, we must conclude the equal protection argument is not likely to succeed on appeal.

Mr. Hall also questions the adequacy of his hearing, noting that, after concluding a second petition was barred by statute, the court characterized the evidentiary hearing as an "offer of proof." Initially, we note that these collateral vehicles are statutory and not constitutional in nature. *Burford v. State* and its progeny remind us that due process simply requires that a potential litigant be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner. 845 S.W.2d 204, 208 (Tenn. 1992). In this instance, the trial court would have been acting within its discretion to dismiss the claims under all three procedural vehicles for the reasons explained above. However, the trial court wisely recognized the due process concerns, particularly in a capital case, and allowed Mr. Hall to present evidence on his second post-conviction petition as if it were a proper vehicle. Mr. Hall presented his witnesses at an evidentiary hearing. Only at the conclusion did the trial court announce that a second petition was statutorily barred and that the evidence would be treated as an offer of proof to aid appellate review. Other than the testimony of a trauma specialist, Linda Manning, whose declaration was made an offer of proof with the motion to reconsider the denial of the second petition for post-conviction relief, Mr. Hall has not identified any witness or other proof he was unable to present due to the timing of the hearing. Accordingly, we conclude Mr. Hall is not likely to succeed on a claim he was denied a full and fair hearing on his juror-bias claim.

Finally, Mr. Hall even suggests that due process requires an expansion of the existing procedural vehicles or the creation of a new avenue of relief crafted by this Court. Expansion of a statute is not within the purview of this Court. While the Court has previously created procedures to fill otherwise procedural voids (e.g. *Van Tran v. State*, 6 S.W.3d 257, 260 (Tenn. 1999) (procedure for adjudicating competency to be executed)), due process makes no such demand in this case. Mr. Hall is unlikely to convince the appellate courts to otherwise grant relief on this issue.

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in *Sexton* as to a juror who said she did not consider the domestic violence she endured was a crime. *Sexton*, 2019 WL 6320518, at *15. Relief was granted, however, as to a second juror who failed to disclose her past domestic violence and shared that information with her fellow jurors. *Id.* at *14. Of course, there was no such sharing of information in this case.

For all of the reasons set forth above, the Court concludes that Mr. Hall has failed to establish a likelihood of success on the merits of his claim for juror bias under any existing procedural vehicle. Likewise, Mr. Hall has failed to demonstrate that this Court should create a new, previously unrecognized procedure based on the facts of this case. As a result, Mr. Hall has not satisfied his burden under Tennessee Supreme Court Rule 12(4)(E), which is required for this Court to grant a stay or delay of an execution date under these circumstances. Accordingly, "Lee Hall's Motion to Stay His Execution Pending Appeals of Right Regarding Biased Juror" is DENIED.

PER CURIAM

SHARON G. LEE, J., dissenting.