

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

ORDER

On 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). Rather, this Court found that "discovery in a coram nobis proceeding is governed by Rule 16, Tennessee Rules of Criminal Procedure." *Id.* The case was remanded to Division III of the Shelby County Criminal Court for further proceedings consistent with this Court's holding.

Since the filing of this Court's August 10, 2001, order/opinion, Petitioner asserts that proceedings were held relative to Petitioner's complaints that (1) the State had failed to provide a "fact-specific, point-by-point admission and/or denial of the [Petitioner's] petition for relief," as required by Rules 3, 8, and 12 of the Tennessee Rules of Civil Procedure, and (2) the State has failed to file a written response to Petitioner's discovery request pursuant to Rule 16, Tennessee Rules of Criminal Procedure. Petitioner states in his respective applications that:

The trial court denied the [Petitioner's] motion to compel a responsive answer, stating, 'Now the court finds that there's - the time for challenging the answer is long gone in this case, and the sufficiency of that has been tested already.' Transcript at p. 114. When counsel asked for a clarification concerning, specifically, Tenn. R. Civ. P. 3, 8, and 12, the court replied, 'Will not be used. The rules of criminal procedure will be used.' Transcript at p. 118.

Application for Petitioner for Tenn. R. App. P. 10 Extraordinary Appeal Concerning Application of Tenn. R. Civ. P. 3, 8, and 12 at 3, State v. Philip Workman, No. B81209 (Division III, Shelby County Criminal Court, Sept. 24, 2001).

The matter of discovery was argued on August 13 and August 24, 2001. At the first hearing, counsel for [Petitioner] argued that the [State] had never submitted a witness list or records and results of tests or Brady material or any other discovery[.] Transcript at pp. 107-8. Furthermore, it was argued that the [State] had never filed a specific answer to the detailed, factual petition for relief filed by the [Petitioner].

Transcript at p. 117-8. The [State] answered that it had opened its files to the [Petitioner] after the clemency hearing of January 25, 2001[,] and that no additional witnesses or evidence had been added to its case since then. Transcript at p. 115. The [State] further stated that, since it would not be the first party to present evidence, it did not know who or what evidence it might present. Transcript at p. 116. . . . [T]he trial court has never ordered [the State] to submit a written answer to the [Petitioner's] discovery request. . . . The trial court has not directed [the State] to, nor has the [State] voluntarily, provided a witness list. The trial court has repeatedly based its decisions concerning the [State's] compliance with disclosure and discovery upon verbal reassurances, alone. In essence, the trial court has imposed civil rules of discovery on the [Petitioner] while permitting the [State] to avoid the requirements of Tenn. R. Crim. P. 16, Brady, Giglio, or any other authority for revealing its proof.

Application for Petitioner for Tenn. R. App. P. 10 Extraordinary Appeal Concerning Disclosure and Discovery at 2-4, State v. Philip Workman, No. B81209 (Division III, Shelby County Criminal Court, Sept. 24, 2001) (*internal footnote omitted*).

Rule 10(a), Tennessee Rules of Appellate Procedure, provides that
An extraordinary appeal may be sought on application and in the discretion of the appellate court alone of interlocutory orders of a lower court from which an appeal lies to the Supreme Court, Court of Appeals or Court of Criminal Appeals:
(1) if the lower court has so far departed from the accepted an usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal as otherwise provided in these rules.

In making application to this Court for interlocutory review, the applicant shall provide to this Court (1) a statement of the facts necessary to the understanding of why an extraordinary appeal lies, (2) a statement of the reasons supporting an extraordinary appeal, and (3) the relief sought. *See* Tenn. R. App. P. 10(c) (emphasis added). Additionally, the application shall be accompanied by copies of any order or opinion or parts of the record necessary for determination of the application. *See* Tenn. R. App. P. 10(c) (emphasis added).

Again, Petitioner asserts that (1) the trial court verbally refused to apply Rules 3, 8, and 12 of the Tennessee Rules of Civil Procedure to the coram nobis proceeding, specifically, the trial court refused to compel the State to file a “fact-specific, point-by-point admission and/or denial of [Petitioner's] application for coram nobis relief,” 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. No written orders were entered by the trial court, rather, Petitioner asserts that the rulings of the trial court were entered verbally at hearings between August 13 and 24, 2001. Although Petitioner provides citation to the record of the proceedings at which the trial court's rulings were made, Petitioner has failed to attach copies of the “parts of the record [which are] necessary for [this Court's] determination of the application.” *See* Tenn. R. App. P. 10(c). This Court finds it imperative that the proceedings below relative to Petitioner's respective Rule 10

applications be attached to the instant applications. This Court is unable to reach a determination regarding the respective applications absent such record.

IT IS THEREFORE ORDERED that Petitioner shall have until the close of business on Thursday, September 27, 2001, to provide this Court with the “parts of the record necessary for determination of the application,” *i.e.*, those parts of the record containing the trial court’s rulings which are now challenged by Petitioner. *See* Tenn. R. App. P. 10(a) (“The appellate court may issue whatever order is necessary to implement review under this rule.”). Failure to supplement the record as directed by this Court within the time period provided will result in dismissal of Petitioner’s applications. This Court’s order does not act as a stay of any proceedings scheduled in Division III of the Shelby County Criminal Court regarding Petitioner’s *coram nobis* application

FOR THE COURT:

DAVID G. HAYES, JUDGE

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