

IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS,
PETITIONER,

vs.

STATE OF TENNESSEE,
RESPONDENT.

No. 17-CR-10-PC

RESPONSE TO PETITIONER ADAMS'S MOTION TO SUBPOENA AND
SCHEUDLE DEPOSITIONS OF SUBPOENAED LAWYERS
AND ALLOW ZOOM DEPOSITIONS

COMES NOW, the State of Tennessee, by and through undersigned counsel of record, and files this *Response to Petitioner Adams's Motion to Subpoena and Schedule Depositions of Subpoenaed Lawyers and Allow Zoom Depositions*. The State would show as follows:

1. Although the rules do allow for deposition testimony to be admitted in a post-conviction proceeding, it is under very limited circumstances. Post-conviction depositions seem to be for the benefit of petitioners who are incarcerated in other states. *See* TN R S CT Rule 28, § 8(C)(1)(c) "If petitioner is incarcerated out of state, petitioner shall be allowed to offer testimony by affidavit or deposition" and Tenn. Code Ann. § 40-30-110(a) "The petitioner shall appear and give testimony at the evidentiary hearing if the petition raises substantial questions of fact as to events in which the petitioner participated, unless the petitioner is incarcerated out of state, in which case the trial judge may permit the introduction of an affidavit or deposition of the petitioner and shall permit the state adequate time to file any affidavits or depositions in response the state may wish."
2. The taking of witness depositions is also apparently authorized in post-conviction proceedings, but the taking of a deposition must be warranted by exceptional

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BY Tammie Wolfe TAMMIE WOLFE, CLERK

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circumstances. *Wade v. State*, 914 S.W.2d 97, 102 (Tenn. Crim. App. 1995), *citing* Tenn. R. Crim. P. 15.

3. The party requesting court approval has the burden of showing that a deposition is necessary. The party must establish that “due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness” be preserved. Tenn. R. Crim. P. 15(a).¹
4. Where the allegations of absence are conclusory in nature with no factual elaboration, the courts may deny the motion. In this light a deposition may not be allowed where the witness' testimony is immaterial or otherwise irrelevant to the trial. *See* David Raybin, Procedure and Grounds for Taking, 10 Tenn. Prac. Crim. Prac. & Procedure § 23:29.
5. Petitioner Adams has not demonstrated any exceptional circumstances, or shown that it is the interest of justice, for this Court to permit depositions of Michael Scholl, Michael Flanagan, and ADA Paul Hagerman.

WHEREFORE, based on the foregoing, the State respectfully requests that this Honorable Court deny Petitioner Adams request to schedule depositions of Michael Scholl, Michael Flanagan, and ADA Paul Hagerman or to allow Zoom depositions of same.

¹ Depositions in criminal cases are also for the primary purpose of preserving testimony and not for discovery. *See* Tenn. R. Crim. P. 15 Advisory Commission Comment: “Apart from depositions taken by agreement, the commission also wants to make clear that depositions are not meant to function as discovery devices in criminal cases. Their taking is meant to be tightly confined to those exceptional cases where the interests of justice require the taking for the preservation of testimony for use at trial, and not for discovery.”

Respectfully submitted:

/s/ Amy P. Weirich

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been emailed and mailed to Douglas Bates IV, attorney for the Petitioner, on this 1st day of December 2024.

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