

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED
12/03/2019
Clerk of the
Appellate Courts

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NOT FOR PUBLICATION**

SHARON G. LEE, J., dissenting.

I would grant Mr. Hall's motion to stay his December 5 electrocution and allow him the opportunity for appellate review of his compelling constitutional claims. I agree with the Court that the trial court recognized the due process concerns in this capital case and wisely allowed Mr. Hall to present evidence on his second post-conviction petition. The procedural posture of Mr. Hall's case shows the need for this Court to thoughtfully consider whether our existing process is deficient, and if so, whether we should allow petitioners a fair opportunity to raise claims in a second post-conviction petition under the unique circumstances presented in Mr. Hall's case. I agree with the trial court's concern that this Court has addressed due process-based tolling of the post-conviction limitation periods, but not the due process issues raised by Mr. Hall:

While some language of *Burford* [*v. State*, 845 S.W.2d 204 (Tenn. 1992)] suggests due process considerations may not necessary[ily] be limited to the statute of limitations, *Burford* and the Tennessee Supreme Court's opinions addressing due process concerns in post-conviction cases as applied to the post-1995 statute . . . have exclusively addressed due process-based tolling of the statutory post-convictions limitations period. In this Court's view, the Tennessee Supreme Court's narrowed focus on the limitations period means that this Court cannot expand the due process-based principles of *Burford* and its progeny to the procedural issues presented in Mr. Hall's case. *Any expansion of a post-conviction petitioner's due process rights must be granted by the Tennessee Supreme Court.*

Hall v. State, No. 308968 (Hamilton Cnty. Crim. Ct. Nov. 19, 2019) (emphasis added).

In my view, Mr. Hall has shown a likelihood of success on appeal. *See* Tenn. Sup. Ct. R. 12(4)(E). Yet, he is being denied the opportunity to present his claims. The Court

of Criminal Appeals has granted relief in other cases to defendants who have raised the same constitutional issue. *See Sexton v. State*, No. E2018-01864-CCA-R3-PC, 2019 WL 6320518 (Tenn. Crim. App. Nov. 25, 2019); *Faulkner v. State*, No. W2012-00612-CCA-R3-PD, 2014 WL 4267460 (Tenn. Crim. App. Aug. 29, 2014); *Rollins v. State*, No. E2010-01150-CCA-R3-PD, 2012 WL 3776696 (Tenn. Crim. App. Aug. 31, 2012).

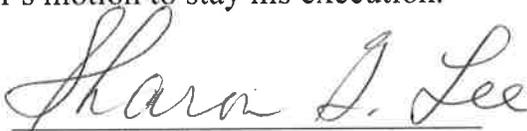
For example, in *Sexton*, the Court of Criminal Appeals in a recent decision (eight days ago) held that a juror's failure to disclose her relevant history of domestic violence violated the petitioner's right to a fair and impartial jury. 2019 WL 6320518, at *14. The juror admitted at the post-conviction hearing that she had been the victim of domestic violence. She did not recall a question on her jury questionnaire asking whether she had been the victim of a crime, but she later testified she made "an honest mistake" and either did not "see[] that question" or "flew through it." *Id.* at *13. In granting post-conviction relief, the Court of Criminal Appeals observed:

The denial of the right to an impartial jury is a structural constitutional error that compromises the integrity of the judicial process and cannot be treated as harmless error. *State v. Odom*, 336 S.W.3d 541, 556 (Tenn. 2011); *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008). Structural errors "necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *Neder v. United States*, 527 U.S. 1, 9 (1999). Because structural errors deprive a defendant of a right to a fair trial, they are subject to automatic reversal. *Rodriguez*, 254 S.W.3d at 361.

Id. at *15. Considering *Sexton*, *Faulkner*, and *Rollins*, Mr. Hall deserves to have an opportunity for full and fair appellate review. In short, we need not speculate on whether Mr. Hall's arguments merit relief; we can simply allow appellate review to continue.

Finally, although the State cites the need for finality and faults Mr. Hall for the delay in pursuing these proceedings, the trial court's findings reveal the practical difficulties in bringing these issues to light. Finality is well and good, but should not trump fairness and justice. The State should not electrocute Mr. Hall before giving him the opportunity for meaningful appellate review of the important constitutional issues asserted in his filings.

For these reasons, I would grant Mr. Hall's motion to stay his execution.


SHARON G. LEE, JUSTICE