

IN THE COURT OF CRIMINAL APPEALS
FOR THE WESTERN DISTRICT OF TENNESSEE
AT JACKSON

FILED
AUG 10 2001
Clerk of the Court
Rec'd By: [Signature]

PHILIP R. WORKMAN,

Petitioner,

CCA No.

v.

Shelby County No. B81209

STATE OF TENNESSEE

Respondent.

SUPPLEMENT TO
APPLICATION FOR PERMISSION TO APPEAL
PURSUANT TO RULE 10 TENNESSEE RULES OF APPELLATE PROCEDURE

Petitioner Philip Workman's Rule 10 Application asserts that if the Trial Court forces him to present proof on August 13, 2001, Mr. Workman will lose forever his rights (1) to engage in discovery prior to presenting any proof, and (2) to present proof in the manner that his lawyers deem to be in his best interests. Such a result would not only violate State statutes and rules. It would violate Article I §§ 8 and 18 of the Tennessee Constitution and the Eighth and Fourteenth Amendments of the Due Process Clause.

The Tennessee and United States Constitutions protect individuals against arbitrary governmental deprivation of guaranteed rights. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 579, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); Brack v. McWhorter, 94 F.3d 242, 244-45 (6th Cir. 1996). Such rights are created by, and their dimensions defined by, sources such as state laws. Roth, 408 U.S. at 577. If a state law provides a person with a legitimate claim of entitlement to a specific benefit, then the person has a right to that benefit which the due process protects. Cleveland Board

of Education v. Loudermill, 470 U.S. 532, 538-39, 135 S.Ct. 1487, 84 L.Ed.2d 494 (1986); Bishop v. Wood, 426 U.S. 341, 344-45, 98 S.Ct. 2074, 48 L.Ed.2d 684 (1976); Robt., 408 U.S. at 577; Brock v. McWhorter, 94 F.3d at 245. Loudermill demonstrates application of this principle.

In Loudermill, terminated school district employees sued boards of education for failing to provide them adequate process prior to their discharge. The Supreme Court concluded that an Ohio statute provided the employees a property interest to continued employment which the Due Process Clause protected. That statute provided that the employees were entitled to retain their positions "during good behavior and efficient service", and they could not be discharged "except for ... misfeasance, malfeasance, or nonfeasance in office." Because this statute provided the employees a legitimate entitlement to continued employment in the absence of improper behavior, the Supreme Court held that the statute created a property interest in continued employment that the Due Process Clause protected. Loudermill, 470 U.S. at 538-39.

In this case, as in Loudermill, a State statute creates a legitimate entitlement to a specific benefit.

The State statute establishing the criminal writ of error coram nobis specifically provides that proceedings on such a writ are "to be governed by the same rules and procedure applicable to the writ of error coram nobis in civil cases." T.C.A. §40-26-105. Because the Tennessee Rules of Civil Procedure therefore govern the proceedings in this case, prior to presenting any proof, Mr. Workman is entitled (1) to discover the identity of any expert the State intends to present at the evidentiary hearing; (2) to discover the subject matter on which the expert will testify; (3) to discover the substance

of that testimony; and (4) to have an opportunity to depose the expert. If Mr. Workman is forced to present proof on August 13, 2001, he will be permanently deprived of these rights in violation of the Tennessee and United States Constitutions.

In addition, Mr. Workman, like all litigants, has constitutionally protected rights to present his case, within reasonable limits, in a manner that his lawyers believe would be in his best interest. As discussed in Mr. Workman's Rule 10 application, for reasons beyond Mr. Workman's control, including actions of the Trial Court, the majority of Mr. Workman's proof is not available for presentation on August 13, 2001. If the Trial Court requires Mr. Workman to go forward, he will be forced to present his case in a manner that his lawyers believe will prejudice his ability to obtain relief. Such a result would also violate due process.

For these reasons, as well as the reasons expressed in Mr. Workman's Rule 10 application, this Court should grant Mr. Workman a Rule 10 application and should

- (1) vacate the Trial Court's order that the Tennessee Rules of Civil Procedure do not apply to this proceeding and Mr. Workman is therefore not entitled to discovery;
- (2) vacate the Trial Court's order that Mr. Workman must put on any proof that is available on August 13, 2001; and
- (3) order that the Trial Court hold a hearing only after Mr. Workman has had an opportunity to engage in discovery, at a time when Mr. Workman's proof is available for presentation.

Respectfully Submitted,

GLANKLER BROWN, PLLC
1700 One Commerce Square
Memphis, TN 38103
(901) 525-1322

By: Robert L. Hutton
Robert L. Hutton #15496

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing by U.S. Mail upon Paul Summers, Jr., Office of the Attorney General Criminal Division, 425 Fifth Avenue North Cordell Hull Building, Nashville, TN 37243-0493 this 10 day of August, 2001.

Robert L. Hutton