

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

State of Tennessee

No. B-02109

Philip R. Workman

ORDER DENYING
DEFENDANT'S MOTION TO RECUSE

This cause came to be heard on May 14, 2001, upon Motion of defendant, Philip R. Workman, requesting this court recuse itself from further action in the above entitled cause. Petitioner alleges (1) this trial court has prejudged the merits of defendant's Petition for Writ of Error Coram Nobis, which pursuant to a remand by the Supreme Court issued on March 30, 2001, this court is required to hear; (2) this court acted without authority in setting a hearing on said motion for April 23, 2001; (3) this court improperly required disclosure of Jencks material prior to the testimony of defendant's witness; and (4) this court disregarded defense counsel's scheduling conflicts in choosing April 23, 2001, as the date for the hearing on defendant's Petition for Writ of Error Coram Nobis.

FINDINGS OF FACT

This court denied the defendant's original Petition for Writ of Error Coram Nobis on March 29, 2001, finding such a petition was procedurally barred for failure to file within the statute of limitations, and further finding that defendant failed to present sufficient argument to establish that the statute of limitations should be tolled.

On March 30, 2001, the Tennessee Supreme Court reversed the decision of the this court and remanded the matter to this court for a hearing on defendant's Petition for Writ of Error Coram Nobis. Thereafter, this Court entered the following orders: Order Requiring Defense Attorney and State Attorney to Refrain, Stop and Desist From Making Any Statements, Writings Or Any Communication Outside the Court, filed April 6, 2001; Order Setting a Hearing Date On Defendant's

Petition for Writ of Error Coram Nobis, filed April 9, 2001; Order to Produce All Unedited Video Tapes, Audio Tapes, Written Statements of Harold Davis in the Possession of the Defendant and Order of Protection, filed April 9, 2001.

Thereafter, defendant, pursuant to Rules 9 and 10 of the Tennessee Rules of Appellate Procedure, sought permission to appeal the above orders. On April 11, 2001, this court entered an order granting an interlocutory appeal to determine whether this court had jurisdiction to enter orders in this case, prior to the filing of the mandate from the Tennessee Supreme Court, whether the trial court erred by setting a April 23, 2001 hearing date, and whether the trial court has authority to order the production of witness statements twenty-four hours prior to such witness' testimony. The Tennessee Court of Criminal Appeals granted the Petitioner's application for Rule 9 review and concluded that this court was without jurisdiction to issue orders entered after the filing of the notice of appeal on March 29, 2001, and prior to the filing of the mandate on April 17, 2001, and this court cannot compel the disclosure of prior statements of a testifying witness until after the witness has given testimony on direct examination. See Philip R. Workman v. State, No. W2001-00881-CCA-RS-PD, (Tenn. Crim. App. filed May 2, 2001, at Jackson).

Defendant's Motion to Recuse was filed on May 7, 2001, and a hearing on this matter was heard on May 14, 2001.

MOTION TO RECUSE

Tennessee has adopted an objective standard for determining when recusal is necessary.

When a motion to recuse is made, a judge should grant the motion whenever his "impartiality might reasonably be questioned." Tennessee Code of Judicial Conduct, Canon 3(F)(1), Tenn. Sup. Ct.

R. 10. A recusal should be granted when:

(1) a judge has doubts about his ability to preside impartially, Lacey v. State, 578 S.W.2d 101, 104 (Tenn. Crim. App. 1978); and/or

(2) when a person of ordinary prudence in the judge's position, knowing all the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality. State v. Cash, 867 S.W.2d 741 (Tenn. Crim. App. 1993).

Moreover, recusal is mandated when a trial court has exhibited personal bias or prejudice.

Personal bias involves antagonism towards the moving party, developed as a result of an opinion on the merits derived from an extrajudicial source. *Alley*, at 821. Prejudice is personal animosity toward the party or in favor of the adverse party to the other's detriment. *Id.* Not every prejudice will warrant recusal. *Id.* In order to disqualify, the prejudice must be of a personal nature, directed at the defendant and must involve an opinion about the merits of the case which is based upon extrajudicial information. *Id.* "If the bias is based upon actual observation of witnesses and evidence given during the trial, the judge's prejudice does not disqualify the judge." *Id.* (citations omitted)

Adverse rulings by a trial court are not usually sufficient grounds to establish bias. *Impezie D. Dillingham*, No. 03C01-9110-CR-319 (Tenn. Crim. App., filed February 3, 1993, at Knoxville).

Additionally, rulings of a trial judge, even if erroneous, numerous and continuous, do not, without more, justify disqualification. Furthermore, prior knowledge of facts about the case is not sufficient in and of itself to require disqualification. *U.S. v. Barker*, 441 F. Supp. 612, 618 (M.D. Tenn. 1977).

Upon examination of the defendant's motion, and after hearing arguments of counsel, this court is of the opinion that recusal is not warranted. Specifically, this court finds that its impartiality is not reasonably subject to question. Additionally, as required by the Tennessee Code of Judicial Conduct, Canon 3(F)(1), Tenn. Sup. Ct. R., 10, this court has objectively evaluated the facts alleged by the defendant and finds that a reasonable person would not conclude that this court is prejudiced against defendant. *See Alley*, at 820.

IT FURTHER APPEARS TO THIS COURT, that the allegations raised by the defendant are not sufficient to warrant recusal by this court.

First, Defendant contends that because the trial court stated that it found "petitioner presented no arguments that merit the granting of a petition for Writ of Habeas Corpus Mobis," it has prejudged

the case. Alley requires recusal in instances where the trial judge has expressed an opinion about the merits of the case prior to hearing the evidence. See Alley v. State, 882 S.W.2d at 822. Defendant contends that because this court denied his Petition, this court's comments reflected an opinion which was prohibitive. However, this court concludes that its prior statement regarding defendant's claim was not a comment on the merits of the claim, but merely a finding by this court that defendant was procedurally barred from bringing said petition because of the statute of limitations, and failed to elicit any evidence or argument which would support the tolling of the statute of limitations. Such a finding does not speak to the merits of the defendant's claim. Moreover, trial courts are routinely called upon to make assessments regarding the propriety of a defendant's claims; thus, this court can find no support for defendant's argument that these comments, alone, indicate bias.

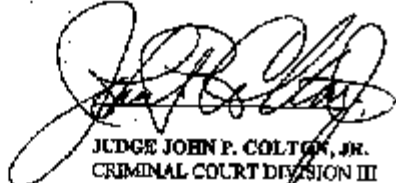
Secondly, it appears that the Tennessee Court of Criminal Appeals has agreed with defendant that the orders issued by this court on April 6 and 9, 2001, prior to the filing of the Tennessee Supreme Court's mandate, are void, and further found that this court improperly ordered the defendant to turn over prior statements of a defense witness before direct examination of that witness. See Phillip R. Workman v. State, No. W2001-00881-CCA-R9-PD (filed May 2, 2001, at Jackson). However, regardless of the Criminal Court of Appeals decision regarding the validity of this court's prior orders, the defendant has failed to demonstrate the trial court's actions evidenced its bias against him. It is inevitable that a trial court will rule against one party or the other. Adverse rulings by a trial court are not sufficient grounds to establish bias. State v. Jimmy D. Dillingham, No. 03C01-9170-CR-319 (Tenn. Crim. App., filed February 5, 1993, at Knoxville). Moreover, actions by a trial court which, on appeal, are determined to be erroneous are not indicative of a trial court's prejudice against one party over the other, and will not, alone, require disqualification. Alley v. State, 882 S.W.2d at 824.

Finally, with regard to this court's order setting the hearing on defendant's Petition for Writ of Error Coram Nobis for April 23, 2001, this court notes that a trial court must balance the rights of the parties with its ethical responsibility to "diligently" execute the responsibilities of its office,

which includes disposing of matters promptly and efficiently. See Tennessee Code of Judicial Conduct, Canon (2)(B)(8), Tenn. Sup. Ct. R. 10. Thus, this court determines that no reasonable person could question its impartiality in entering said order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the aforesaid Motion of defendant should be denied.

5-15-4
FILED
MAY 15 2001
CLERK
J. Heppner


JUDGE JOHN P. COLTON, JR.
CRIMINAL COURT DIVISION III
THIRTIETH JUDICIAL DISTRICT

5-15-2001
DATE