

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

No. B81209

PHILIP R. WORKMAN

FILED 4-11-01

Defendant.

WILLIAM B. KEY, CLERK

BY [Signature]

MOTION TO VACATE ALL ORDERS ENTERED SUBSEQUENT TO THE FILING OF THE NOTICE OF APPEAL IN THIS CAUSE

COMES NOW your Movant, Philip R. Workman, through his undersigned counsel of record, and moves this court to vacate all orders entered after the filing of a Notice of Appeal filed by Mr. Workman on March 29, 2001 in this cause. Simply put, Movant asserts no trial court has jurisdiction to entertain any motions in this cause, until at least ten (10) days after the mandate has been filed with the clerk of the Criminal Court of Shelby County. In support of this Motion, your movant would show unto the Court as follows:

1. On March 28, 2001, Petitioner filed a "Petition for Writ of Error Coram Nobis, Supplement to Original Petition for Post Conviction Relief, Petition for Declaratory Judgment, Motion for Stay of Execution." Additionally, on March 28, 2001, Mr. Workman filed a "Motion to Reopen Post Conviction Petition, Motion for Stay of Execution."

2. This Honorable Court after hearing entered its "Amended Findings of Facts and Conclusions of Law on Petition for a Writ of Error Coram Nobis, Motion to Reopen Post Conviction Petition, and Motion for Stay of Execution" on March 29, 2001. A notice of appeal was timely filed on March 29, 2001.

3. The Court of Criminal Appeals by Order dated March 29, 2001, affirmed the decision of the Trial Court. By Order dated March 30, 2001, the Supreme Court of Tennessee reversed and remanded the case to the Trial Court, allowing Mr. Workman to litigate a Petition for Writ of Error Coram Nobis. The judgment was entered by the Supreme Court on March 30, 2001. (a copy of the Judgment is attached hereto as Exhibit 1)

4. It is elementary that the filing of a Notice of Appeal divests any Trial Court of

Jurisdiction.

5 Pursuant to Rule 43 of the Tennessee Rules of Appellate Procedure, the Trial Court does not acquire jurisdiction to conduct further proceedings until ten (10) days after the mandate has been filed with the trial court clerk. Specifically Rule 43(a), (c) provides as follows:

(a) **Filing Of Mandate** - the clerk of the Trial Court shall file the mandate promptly upon receiving it.

...

(c) **Remandment** - when the Appellate Court remands the case for a new trial or hearing and the mandate is filed in the trial court, the case shall be reinstated therein and the subsequent proceedings conducted after at least ten (10) days notice to the parties.

T.R.A.P. 43 (a), (c)

6 Pursuant to Rule 42 (a) of the Tennessee Rules of Appellate Procedure, the mandate issues eleven (11) days after the entry of judgment of the Supreme Court unless a Petition to Rehear is timely filed by either party, which automatically stays the issuance of the mandate. Specifically Rule 42 (a) of the Tennessee Rules of Appellate Procedure provides in relevant part as follows:

The clerk of the Supreme Court shall transmit to the clerk of the trial court the mandate of the Supreme Court, with notice to the parties, 11 days after the entry of the judgment unless the court orders otherwise. The timely filing of a Petition for Rehearing will stay the mandate until disposition of the Petition unless the Court orders otherwise...

(See Rule 42 (a) T.R.A.P.)

7 Pursuant to Rule 39 (b) of the Tennessee Rules of Appellate Procedure, a Petition for Rehearing may be filed within ten (10) days after the entry of the judgment.

(See Rule 39 (b) T.R.A.P.).

8 Since the judgment of the Supreme Court was issued March 30, 2001, Mr. Workman had until and including April 9, 2001 to file a Petition for Rehearing to the Tennessee Supreme Court. Counsel for Mr. Workman has filed a Petition for Rehearing with the Tennessee Supreme Court, by mailing same certified mail return receipt requested on April 9, 2001. This constitutes a timely filing for Petition for Rehearing in accordance with Rule 20 (a), of the Tennessee Rules of Appellate Procedure, and Rule 21 (a) of the

Tennessee Rules of Appellate Procedure.

9. Thus, the mandate in this case has not issued, and will not issue until the Supreme Court enters an order upon Mr. Workman's Petition for Rehearing. Furthermore, this court may not conduct any proceedings until the clerk of the Supreme Court transmits a copy of the mandate to the Clerk of the Criminal Court, and the parties have been given ten (10) days notice of the filing of the mandate.


10. Thus, this Honorable Court, has been without jurisdiction to entertain any Motions with respect to the Workman matter. Thus, this Honorable Court's orders entered since filing of the Notice of Appeal have been entered while the Court was wholly without jurisdiction of this cause; and are thus void and of no effect.

11. Petitioner further relies upon the transcript of the proceedings conducted before this Honorable Court on Monday April 9, 2001 at 8:00 a.m.

Wherefore premises considered, Workman prays the Orders entered by this Court in this matter after filing of the Notice of Appeal be vacated due to this Court's lack of jurisdiction.

Respectfully Submitted,

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