

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

PAUL DENNIS REID,)	
)	
Appellant,)	
)	DAVIDSON COUNTY
V.)	No. M2003-2687-CCA-R10-PD
)	
STATE OF TENNESSEE,)	
)	
Appellee.)	

**ON APPLICATION FOR EXTRAORDINARY APPEAL UNDER T.R.A.P. 10
FROM THE ORDER OF THE DAVIDSON COUNTY CRIMINAL COURT**

**STATE'S RESPONSE TO THE APPLICATION
FOR EXTRAORDINARY APPEAL**

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INTRODUCTION

The Court has directed that the State respond to an application for extraordinary appeal, pursuant to Tenn. R. App. P. 10, filed by appellant, Paul Dennis Reid (hereinafter "petitioner" or "Reid"). Reid seeks interlocutory review of the post-conviction court's order of October 16, 2003, denying his motion for recusal. Petitioner contends that by "refusing to allow the Petitioner-Appellant a hearing on his motion to recuse and applying the wrong legal standard in determining the recusal issue," the post-conviction court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review under Rule 10(a)(1). For the reasons set forth herein, the Court should deny the application.

STATEMENT OF THE CASE

Paul Dennis Reid, Jr., was convicted by a Davidson County jury for the February 16, 1997, murders of Steven G. Hampton and Sarah Jackson at the Captain D's Restaurant in Nashville, Tennessee. (Davidson Criminal Case No. 97-C-1834) The jury sentenced Reid to death for each of the murders. Both this Court and the Tennessee Supreme Court affirmed Reid's conviction and sentence on direct appeal. *State v. Reid*, 91 S.W.3d 247 (Tenn. 2002). The United States Supreme Court denied a writ of certiorari. *Reid v. Tennessee*, U.S. , 124 S.Ct. 56 (2003). Reid was also convicted by a Montgomery County jury for the first degree murders of two Baskin Robbins employees¹ and by a second Davidson County jury for the first degree murders of three McDonald's employees.² (Davidson Criminal Case No. 97-C-1836), Judge Cheryl Blackburn, Davidson County

¹The appeal from the Montgomery County convictions, *State v. Paul Dennis Reid, Jr.*, No. M2001-02753-CCA-R3-DD, was argued before a panel of this Court on October 14, 2003, and is pending a decision.

²That case is currently on appeal in this Court. *State v. Paul Dennis Reid, Jr.*, No. M2003-00539-CCA-R3-DD. Reid's initial brief is currently due February 5, 2004.

Criminal Court Judge, Division III, presided over both of the Davidson County trials.

On April 28, 2003, Reid filed a *pro se* post-conviction petition in Davidson County Criminal Court seeking relief from his convictions and sentence in Case No. 97-C-1834. (Attached hereto as Appendix 1) Finding that the petition appeared to be timely filed and in compliance with the jurisdictional provisions under Tenn. Code Ann. § 40-30-202, the court stayed Reid's execution (Order attached hereto as Appendix 2) and, on May 1, 2003, pursuant to Tenn. Code Ann. § 40-30-201 *et seq.*, appointed the Tennessee Post-Conviction Defender to represent Reid in post-conviction proceedings. (Order attached hereto as Appendix 3) On September 2, 2003, Reid filed a "Motion to Recuse Judge Cheryl Blackburn for Cause," alleging as cause for recusal (1) improprieties in connection with a prior adverse ruling by Judge Blackburn regarding Reid's competence to stand trial in an unrelated criminal prosecution, specifically Case No. 97-C-1836³ (the McDonald's case), (2) an appearance of impropriety due to Judge Blackburn's previous employment with the Davidson County District Attorney's Office, and specifically her long working relationship with Deputy District Attorney General Tom Thurman, (3) conflict of interest due to General Thurman's support of Judge Blackburn's judicial election campaign, (4) conflict of interest due to previous allegations of misconduct against Judge Blackburn by the Office of the Post-Conviction Defender in other capital cases in which she served as prosecutor, and (5) actual bias by Judge Blackburn against Assistant Post-Conviction Defender Marjorie Bristol, Reid's counsel in these post-conviction proceedings.⁴

³Reid did not challenge his competence to stand trial in the case at issue in this post-conviction proceeding.

⁴Although Reid included several additional allegations in support of his Motion to Recuse, he does not cite nor otherwise appear to rely upon them in support of his current request for extraordinary review.

On September 8, 2003, the post-conviction court entered an order requiring that any party wishing to submit argument or documentary evidence on the allegation regarding Judge Blackburn's election campaign shall do so under seal. In addition, the court ruled that, "[i]n the event the Court grants [Reid's] counsel's request for a hearing, any proof regarding that matter [*i.e.*, the election campaign] will be submitted to a Court other than this Court."⁵ (Rule 10 Application, Appendix B)

On October 16, 2003, the post-conviction court entered an order summarily denying Reid's motion for recusal. After citing pertinent legal authority and addressing each of Reid's individual allegations, the court concluded that "it is capable of presiding impartially in this matter" and, in addition, that "a person of ordinary prudence would not find a reasonable basis for questioning the Court's impartiality." (Rule 10 Application, Appendix D)

REASONS FOR DENYING THE APPLICATION

A. The application fails to meet the standard for an extraordinary appeal under Tenn. R. App. P. 10(a).

Reid has failed to meet the standard for an extraordinary appeal, because he cannot demonstrate that the post-conviction court "has so far departed from the accepted and usual course of judicial proceedings as to require immediate review" or that extraordinary review is "necessary for complete determination of the action on appeal." Tenn. R. App. P. 10(a). Extraordinary review under Rule 10 is designed to correct judicial actions amounting to a fundamental illegality where there is no other adequate remedy. The parameters for extraordinary appeal under Tenn. R. App. P.

⁵Reid construes the post-conviction court's September 8th order as an "indicat[ion] that [Judge Blackburn] agreed that another judge should be the one to hear the motion and that she would transfer the case if she granted a hearing on the matter." (Application, p. 3) That reading is plainly incorrect. The court's order in no way indicated that a hearing would be granted on Reid's motion for recusal or that the case would be transferred. Rather, the court's order was limited to a single allegation in the motion concerning campaign contributions and provided a mechanism whereby proof could be taken in light of the ethical considerations under Tenn. S. Ct. R. 10, Canon 5, in the event the court determined a hearing on Reid's motion was warranted.

10 are "very narrowly circumscribed to those situations in which the trial court or the intermediate appellate court has acted in an arbitrary fashion." Tenn. R. App. P. 10, Advisory Commission Comment. Rule 10 does not allow for "judicial intervention" on interlocutory matters solely on grounds of judicial economy or in the interest of the speedy resolution of an issue where the statutory grounds for review are not satisfied.⁶ An appellate court may not disregard the rules of appellate procedure so as to conduct review under a different or inconsistent standard than that specified under the rules. *See, e.g., Fields v. State*, 40 S.W.3d 450 (Tenn. 2001).

In *State v. Willoughby*, 594 S.W.2d 388, 392 (Tenn. 1980), the Tennessee Supreme Court held that an extraordinary appeal should only be granted when it is established that: (a) the ruling of the court below represents a fundamental illegality; (2) the ruling constitutes a failure to proceed according to the essential requirements of the law; (3) the ruling is tantamount to the denial of either party of a day in court; (4) the action of the trial judge was without legal authority; (5) the action of the trial judge constituted a plain and palpable abuse of discretion; or (6) either party has lost a right or interest that may never be recaptured. Reid has failed to demonstrate that an extraordinary appeal is appropriate under these criteria.

The post-conviction court in this case possessed both the authority and the discretion to determine Reid's motion for recusal. Concomitant with the discretion to determine the recusal question is the discretion to determine whether a hearing is a necessary element of that inquiry. Given that standard, in order to justify extraordinary review of Judge Blackburn's interlocutory order denying the motion for recusal, Reid must demonstrate either a fundamental illegality in the court's determination or a plain and palpable abuse of discretion. He has shown neither. In addition, and

⁶*See* Issue 3 set forth in this Court's November 13, 2003, order.

moreover, if Reid remains aggrieved by the court's decision on the recusal motion at the conclusion of these proceedings, he has a plain and adequate remedy by direct appeal. Indeed, the fact that the recusal issue may be rendered moot should the trial court grant relief on Reid's post-conviction petition is a prime reason for denying his request for review of this interlocutory matter.

If, on direct appeal and after review of the entire record of these proceedings, this Court were to determine that the trial court's denial of a hearing on the recusal motion was an abuse of discretion, the Court would then have the authority to order a limited remand to the post-conviction court for additional factual findings.⁷ *See, e.g., John C. Wells, III v. State*, No. M2002-01303-CCA-R3-PC, 2003 WL 21713423, * 3 (Tenn. Crim. App. Jul. 23, 2003) (app. denied Nov. 24, 2003). In *Wells*, the petitioner moved for recusal of the post-conviction judge, Davidson County Criminal Judge Cheryl Blackburn, because she had served as Deputy District Attorney General during the petitioner's original prosecution.⁸ When the judge denied the motion, petitioner sought an extraordinary appeal to this Court under Tenn. R. App. P. 10. This Court denied the application. Petitioner subsequently appealed from the final judgment denying his post-conviction petition. After oral argument, the Court remanded to the post-conviction court for additional findings on the issue. *Id.*, at *3-4. The post-conviction judge made additional findings, which were certified to this Court, and the recusal issue was appropriately determined in the course of the direct appeal. *Id.*, at *4-5. Of course, the procedure outlined herein presupposes, among other things, (1) the existence of a final judgment adverse to the petitioner, which is (2) properly appealed to this Court, and in which

⁷*See* Issue 2 set forth in this Court's November 13, 2003, order.

⁸The Court noted in its opinion that this issue is one that frequently arises, since former prosecutors often become trial judges.

petitioner (3) chooses to raise the recusal issue in light of the entire record of proceedings in this case. Given those contingencies, any discussion concerning a possible disposition of the case on direct appeal at this juncture is premature and speculative at best.

In *State v. Smith*, 906 S.W.2d 6 (Tenn. Crim. App. 1995), a defendant facing capital murder charges filed an application for an extraordinary appeal requesting, among other things, review of an order entered by the criminal court denying his motion for recusal of the trial judge. The defendant argued that recusal was necessary because the trial judge had been the prosecuting attorney in an earlier case in which the defendant was convicted of robbery, and that the State intended to rely on that earlier case as an aggravating factor in support of the death penalty in the present case. The Court refused to grant extraordinary relief on the recusal issue, finding that the issue "may be more fully litigated in a direct appeal." *Smith*, 906 S. W.2d at 11-13.

The propriety of a judge's action in refusing to disqualify him or herself is a matter that is more appropriately decided on direct appeal from a judgment adverse to the complaining party. Extraordinary appeal is not warranted.

B. The post-conviction court did not abuse its discretion in either its denial of Reid's motion to recuse or the procedure employed in reaching that determination.

1. Recusal of Trial Judge - Grounds for Recusal and Standard of Review

A trial judge should recuse him or herself whenever the judge "has any doubt as to his [or her] ability to preside impartially in a criminal case or whenever his [or her] impartiality can reasonably be questioned." *Pannell v. State*, 71 S.W.3d 720, 725 (Tenn. Crim. App. 2001). While the first inquiry is a subjective test, the second is an objective standard. *Alley v. State*, 882 S.W.2d 810, 820-21 (Tenn. Crim. App. 1994). "Thus, while a trial judge should grant a recusal whenever the judge has any doubts about his or her ability to preside impartially, recusal is also warranted

when a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality." *Id.*, at 820. The trial judge retains discretion over his or her recusal. *State v. Smith*, 906 S.W.2d 6, 11 (Tenn. Crim. App. 1995). Reasons which warrant recusal include:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it

Tenn. R. Sup. Ct. 10, Code of Judicial Conduct, Canon 3E(1)(a), (b).

A judge's determination whether she will disqualify herself from sitting on a case is a matter within that judge's sound discretion, and the denial of a motion to recuse should be upheld by a reviewing court absent an abuse of discretion. *Kinard v. Kinard*, 986 S.W.2d 220 (Tenn. App. 1998); *State v. Cash*, 867 S.W.2d 741, 749 (Tenn. Crim. App. 1993). The Tennessee Supreme Court has instructed that, under this standard, "[a]n appellate court should not reverse for 'abuse of discretion' a discretionary judgment of the trial court unless it affirmatively appears that the trial court's decision was against logic or reasoning, and caused an injustice or injury to the party complaining." *Marcus v. Marcus*, 993 S.W.2d 596, 601 (Tenn. 1999); *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996). Discretion is abused only if the record contains no substantial evidence to support the conclusion of the trial court. *See, e.g., State v. Grear*, 568 S.W. 2d 285 (Tenn. 1978) (addressing abuse of discretion standard in the context of probation revocation).

No precise procedure is contemplated by the Code of Judicial Conduct nor established through case law for determining a motion for recusal, though the Tennessee Supreme Court has

recognized that the "accepted practice" is the filing of a motion for recusal with supporting affidavits of prejudice with the judge whose removal is sought. *See State v. Austin*, 87 S.W.3d 447, 471 (Tenn. 2002) (incorporating by reference the decision of this Court on defendant's motion to disqualify the Tennessee Supreme Court). "There is no authority for issuance of subpoenas, or other discovery procedures, in support of one's motion to disqualify a judge." *Id.* Because no specific procedure is mandated under Tennessee law, and the decision is ultimately a matter within the sound discretion of the trial court, the State submits that the trial judge is only obligated to adduce sufficient evidence to show that the court exercised a conscientious and intelligent judgment, rather than acting arbitrarily. Indeed, contrary to petitioner's contention, there is no absolute right, by rule, statute or otherwise, to an evidentiary hearing or oral argument on *any motion* filed in the course of a post-conviction proceeding. And where, as in this case, the record already before the court provides a sufficient basis upon which to deny a petitioner's motion for recusal, no evidentiary hearing is required. Contrary to Reid's contention that Judge Blackburn engaged in fact-finding based upon "extrajudicial facts," all of the allegations in Reid's motion were capable of determination as a matter of law or based upon matters already of record in this or related proceedings involving the petitioner.

This Court's decision in *State v. Connors*, 995 S.W.2d 146 (Tenn. Crim. App. 1998), does not require otherwise.⁹ First, *Connors* did not establish an absolute procedure to be followed in all recusal proceedings. Indeed, as the Supreme Court recognized in *Austin*, *supra*, no precise procedure is required under Tennessee law. Rather, a trial judge must exercise his or her discretion in light of the unique circumstances of each case. Moreover, *Connors* is factually distinguishable from this case. In *Connors*, the defendant's motion for recusal alleged, among other things, that the trial judge

⁹See Issue 1 set forth in this Court's November 13, 2003, order.

engaged in improper *ex parte* communications with the district attorney general's office about his case and, in another *ex parte* communication, ordered the Sumner County Sheriff to continue to confine the defendant despite the court's order that he be released. *Id.*, at 148-49. The trial court denied the allegations and summarily dismissed the defendant's motion, ruling that the allegations presented facially insufficient grounds for recusal. *Id.* On appeal, this Court found that the trial court abused its discretion in ruling that the allegations presented facially insufficient grounds for recusal. *Id.* "Appellant's motion contained serious allegations of judicial misconduct. It was not enough for the trial court to determine that she had no subjective bias against Appellant, she was also required to determine whether her impartiality might reasonably be questioned." *Id.* Although this Court concluded that the trial court had abused its discretion by denying the recusal motion "without giving Appellant an opportunity to present proof on the matter," it did not remand the case on the recusal issue. Instead, in a separate issue challenging the sentence imposed by the trial court, the Court determined that the State failed to overcome a presumption of judicial vindictiveness and remanded the case for transfer to another judge to conduct a new sentencing hearing. *Id.*, at 149-50. Given the unique circumstances of *Connors*, coupled with the plain language of *Austin*, *supra*, the trial court's summary disposition of Reid's motion to recuse cannot be said to constitute such a "clear abuse of discretion that has so far departed from the accepted and usual course of judicial proceedings so as to require immediate review."

Further, Reid's reliance on Florida law as authority for an evidentiary hearing is misplaced because, unlike Tennessee, the Florida Rules of Criminal Procedure specifically provided that a judge, "shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification." Rule 3.23 (d), Fla. R. Crim. P. *See also Bundy v. Rudd*, 366 So.2d 440, 442 (Fla. 1978) ("When a

judge has looked beyond the mere legal sufficiency of a suggestion of prejudice and attempted to refute the charges of partiality, he has exceeded the proper scope of his inquiry and on that basis alone established grounds for his disqualification."). As set forth above, neither the Code of Judicial Conduct nor established case law in this State contain a similar limitation on the authority of a trial judge to review motions for recusal. *Austin*, 87 S.W.3d at 471. Indeed, under Tennessee case law, a trial judge is specifically empowered to make that determination. *Smith*, 906 S.W.2d at 11.

2. *The post-conviction court properly denied petitioner's motion to recuse without an evidentiary hearing.*

Not only has petitioner failed to demonstrate a "plain and palpable" abuse of discretion by the post-conviction court so as to warrant extraordinary review by this Court, but it is clear from an analysis of the allegations in the motion to recuse that the court's summary denial of the motion was entirely appropriate.

(a) Inappropriate Conduct and Bias Against Petitioner in Determining Competence

Reid's first ground for recusal centers around the trial court's ruling on a pre-trial motion challenging his competence to stand trial in the McDonald's case.¹⁰ (Davidson Criminal No. 97-C-1836) In his motion to recuse, Reid argued that Judge Blackburn "acted improperly" and "demonstrated bias" in the previous proceedings and, further, that the court's previous determination of the competence issue "lends itself to the conclusion that she will be more biased in that determination in these proceedings." (Application, Appendix A, pp. 7-10) To support his claim, Reid attached a copy of the motion to recuse that had previously been filed in the McDonald's case. In

¹⁰As previously indicated, Reid did not challenge his competence in the case at issue in these post-conviction proceedings.

rejecting this claim as "cause" for recusal, Judge Blackburn pointed out that petitioner's current allegations mirrored allegations made in the prior case and had already been decided adversely to him in that proceeding. (Application, Appendix D, pp. 3 -11) In fact, Reid presented no allegation in support of his claim that had not already been raised and rejected in the prior proceeding. Likewise, in rejecting the motion, Judge Blackburn largely quoted her previous order denying Reid's identical recusal allegations in the McDonald's case. (*Id.*)

It is well established that a judge is in no way disqualified because she tried and made certain findings in previous litigation. *State v. Hines*, 919 S.W.2d 573, 578 (Tenn. 1996); *King v. State*, 216 Tenn. 215, 391 S.W.2d 637, 642 (1965). A basis for recusal must arise from incidents or activities outside of the judge's trial role. Such "extrajudicial bias" refers to a bias that is not derived from evidence or conduct of the parties that the judge observes in the course of the proceedings. *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980). Moreover, even assuming Reid was entitled to a second bite at the apple on this issue, he presented no allegations in his current motion to justify an evidentiary hearing, since he merely complained about the court's conduct in a proceeding already a matter of record. The post-conviction court did not abuse its discretion in relying on its previous ruling rejecting Reid's claim.

(b) Prosecutorial Bias Resulting from Judge Blackburn's Close Relationship with Tom Thurman and His Participation in Her Campaign

As to Reid's allegations of bias arising from Judge Blackburn's relationship with Tom Thurman, the court's summary denial did not constitute an abuse of discretion. Citing four separate decisions of this Court to support its denial of Reid's claim (at least one of which involving Judge Blackburn herself), the post-conviction court ruled that the "mere fact that the Court was previously

employed by the same office as the prosecutors in this case has no bearing on the Court's ability to remain fair and impartial." (Application, Addendum D, p. 15) No new allegations were presented in Reid's current motion to require a hearing on that point.

Recusal of a judge is required if the judge "served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter." Tenn. S. Ct. R. 10, Code of Judicial Conduct, Canon 3E(1)(b). The commentary to that code section, however, provides that lawyers in government practice are not considered to be in "association" within the meaning of that section. Nor did General Tom Thurman or any other prosecutor in his office serve as a lawyer in any matter involving Reid during Judge Blackburn's tenure in that office. The undisputed facts show that Judge Blackburn took office as criminal court judge on August 22, 1996. Reid was arrested in June of 1997 for offenses which occurred in February, March, and April of 1997. (Application, Appendix D, p. 15, fn. 11)

Reid's motion to recuse contained no specific allegation concerning Judge Blackburn's professional relationship with Tom Thurman in the District Attorney's office from which her impartiality in this case might reasonably be questioned or that would justify a hearing on that matter. In addition, Reid has cited no authority for the proposition that he is entitled to examine Judge Blackburn herself on such claims. As previously indicated, there is no authority for issuance of subpoenas, or other discovery procedures, in support of a motion to disqualify a judge. *Austin*, 87 S.W.3d at 471. Moreover, the Tennessee Supreme Court has held that an unequivocal statement by the trial judge under the oath of his office denying the allegations contained in the motion and attached documents ends the question of whether the trial judge harbored bias or prejudice. *See Caruthers v. State*, 814 S.W.2d 64, 68 (Tenn. Crim. App. 1991) (citing *Omohundro v. State*, 172

Tenn. 48, 61-62, 109 S.W.2d 1159, 1164 (1937)).

Reid further contended that recusal was warranted because General Thurman "provided both vocal and financial support for [the Court's] election campaign in 1998." In denying the motion to recuse on this ground, the post-conviction court unequivocally stated that, because the court had strictly complied with the Tennessee Supreme Court's ethical rules whereby a judicial candidate would be precluded from learning of the existence or amount of any contributor's campaign contribution, the court "has no knowledge whatsoever regarding anyone's financial contributions or lack thereof." (Application, Appendix D, p. 16) Given Judge Blackburn's unequivocal statement, a hearing to determine the extent of General Thurman's financial support, if any, would have added nothing to Reid's claim, because the critical inquiry centers around facts known to the judge.¹¹ *See Alley*, 882 S.W.2d at 820 (recusal is warranted "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").

To the extent General Thurman may have provided "vocal support," as alleged in petitioner's motion, the court stated that its objectivity in court proceedings had never been affected by any attorney's support for her candidacy. (*Id.*, at 17) *See Caruthers, supra*. Thus, even accepting petitioner's allegations as true, recusal was not warranted. As Judge Blackburn noted in her order denying recusal, to hold otherwise would subject successful judicial candidates to recusal in every case.

¹¹In addition, it has been held in other jurisdictions that a contribution not exceeding the legal limit for campaign contributions made by counsel to the campaign of a trial judge before whom counsel appears is a legally insufficient ground to justify recusal, and that a judge's acceptance of campaign contributions from lawyers does not create bias, or even an appearance of impropriety necessitating recusal. *See generally* 46 Am Jur 2d, Judges § 164 (1994).

(c) Former Allegations of Misconduct on the part of Judge Blackburn and Bias against Petitioner's Counsel

The post-conviction court likewise did not abuse its discretion in rejecting Reid's contention that a conflict of interest arose by virtue of previous allegations of prosecutorial misconduct in two other capital cases in which Judge Blackburn served as prosecutor. The post-conviction court cited numerous decisions of this Court to support its denial of Reid's claim. (Application, Appendix D, p. 20) *See, e.g., State v. Parton*, 817 S.W.2d 28, 29-30 (Tenn. Crim. App. 1991) (holding that trial judge did not abuse his discretion in denying motion for recusal where defendant had previously filed grievance against him). Aside from the merits of the trial court's recusal decision, which is plainly supported by case law identified in the trial court's order, Reid failed to articulate, either in his motion to recuse or his present application in this Court, how a hearing could have furthered his claim. The fact that claims of prosecutorial misconduct were previously asserted in the post-conviction cases of Byron Black and Charles Wright, and that Judge Blackburn served as a prosecutor in those cases is not disputed. Indeed, Reid cited decisions from this Court and the Tennessee Supreme Court to establish that fact. Under these circumstances, all that remained for the post-conviction court was to rule on the recusal issue as a matter of law.

With respect to Reid's claim that Judge Blackburn exhibited bias against post-conviction counsel personally, he has again failed to articulate how an evidentiary hearing would advance that claim. All of the instances of which Reid complains either occurred in open court and are, consequently, already matters of record, or are contained in written orders of the post-conviction court. In addition, the court's order on this point contains a lengthy recitation of the procedural history of the case, including a description of the numerous, often frivolous, motions filed by

petitioner's counsel and the court's responses thereto.¹²

Post-conviction counsel in this case has made very serious allegations against Judge Cheryl Blackburn. As noted in the State's response to the motion to recuse, "the Court has been accused of being unethical, biased, prejudiced, ignorant and insensitive as well as pandering to the press," all in an apparent attempt to force recusal following adverse rulings by the trial court. (Application, Appendix C, p. 4) This Court should not permit such tactics to derail the orderly progression of these proceedings. Judge Blackburn's order denying recusal was well reasoned and fully supported by the law and matters already of record in these and other proceedings involving the petitioner. The court's summary dismissal of Reid's motion to recuse was an exercise of sound judicial discretion and provides no basis for extraordinary review by this Court.

¹²For example, the court's order noted that, despite counsel's repeated complaints that her heavy caseload precluded her from complying with deadlines set by the court, counsel nevertheless felt it necessary to file a pleading complaining about the court's use of the term "themselves" when referring to petitioner's counsel. In another motion, petitioner challenged the court's reference to the current case as the "Captain D's" case. (Application, Addendum D, pp. 21-25)

CONCLUSION

For all of the above reasons, the application for extraordinary appeal under Tenn. R. App. P.10 should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded by United States mail, first class postage prepaid, to:

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