

**SUPREME COURT OF TENNESSEE
 SUPREME COURT DISCRETIONARY APPEALS
Grants & Denials List**

Monday, October 28, 2013

GRANTS

Amended 10-30-13

STYLE/APPEAL NUMBER	COUNTY TRIAL JUDGE TRIAL COURT NO.	APPELLATE JUDGE JUDGMENT	NATURE OF APPEAL	ACTION
<u>Nashville</u>				
Darlene Mattox v. Lawson Electric Company, Et A. M2013-01444-SC-R9-WC	Dickson County Chancery Court Judge James W. Freeman No. 2011CV316		Rule 9	Granted: Application of Lawson Electric Company and Westfield Insurance Company (Order Filed 10-16-2013)
Mack Phillips, Et. AL. V. Montgomery County, Tennessee Et AL. M2012-00737-SC-R11-CV	Montgomery County Circuit Court Judge Ross H. Hicks No. MCCCCVRM1125535	Cottrell, J Affirmed in part, Reversed in part	Rule 11	Granted: Application of Mack Phillips and LeAnn Phillips (Order Filed 10-16-2013)
<u>Knoxville</u>				
NONE				

Jackson

Bobby Glen Crocker v. State of Tennessee W2012-00960-SC-R11-PC	Carroll County Circuit Court Judge Donald E. Parish No. 05CR98	Ogle, J Tipton, P. J., Separate Concurring Opinion Affirmed	Rule 11	<p>Granted - Application of Bobby Glen Crocker</p> <p><i>Mr. Crocker's Application for permission to appeal is granted, judgment of the Court of Criminal Appeals vacated, and case is remanded to the trial court for further proceedings.</i></p> <p>(Order Filed 10-23-13)</p>
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**SUPREME COURT OF TENNESSEE
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Monday, October 28, 2013

DENIALS

Amended 10-30-13

STYLE/APPEAL NUMBER	COUNTY TRIAL JUDGE TRIAL COURT NO.	APPELLATE JUDGE JUDGMENT	NATURE OF APPEAL	ACTION
<u>Nashville</u>				

James G. Coons II v. State of Tennessee M2012-00529-SC-R11-PC	Davidson County Criminal Court Judge Cheryl A. Blackburn No. 2008-B-893	Craft, Sp.J. Affirmed	Rule 11	Denied: Application of James G. Coons, II (Order Filed 10-25-13)
State of Tennessee v. Jackie Ray Elkins M2012-00238-SC-R11-CD	Davidson County Criminal Court Judge Steve Dozier No. 2010-B-794	Smith, J Affirmed	Rule 11	Denied: Application of Jackie Ray Elkins (Order filed 10-23-13)
State of Tennessee v. Michael J. Fryar M2012-01544-SC-R11-CD	Sumner County Criminal Court Judge Dee David Gay No. 758-2011	Witt, J Affirmed	Rule 11	Denied: Application of Michael J. Fryar (Order filed 10-23-13)
State of Tennessee v. Nora Hernandez M2012-01235-SC-R11-CD	Williamson County Circuit Court Judge Robbie T. Beal No. I-CR-126117	Witt, J Affirmed in part, dismissed in part	Rule 11	Denied: Application of Nora Hernandez (Order filed 10-25-13)
The Metropolitan Government of Nashville and Davidson County v. Albert M. Bender, Et Al. M2012-02196-SC-R11-CV	Davidson County Chancery Court Judge Carol L. McCoy No. 09487II	Per Curiam Order Dismissed	Rule 11	Denied: Application of Albert M. Bender (Order filed 10-28-13)
State of Tennessee v. Clark Beaugard Waterford, III M2011-02379-SC-R11-CD	Davidson County Criminal Court Judge J. Randall Wyatt, Jr. No. 2010-C-2637	Thomas, J Affirmed	Rule 11	Denied: Application of Clark Beaugard Waterford, III (Order filed 10-23-13)

Knoxville

Geroge Emrich Et. Al. v. Taylor Adams, Et. Al. E2012-00725-SC-R11-CV	Loudon County Chancery Court Judge Frank V. Williams, III No. 11562	Swiney, J Affirmed and Remanded	Rule 11	Denied: Application of George Emrich and Mary L. Emrich <i>(The motion of George Emrich and Mary L. Emrich to file the supplemental transcript of the January 23, 2013, oral argument before the Court of Appeals is granted)</i> <i>(The motion of Judge Henry Russell, retired judge of the General Sessions Court for Loudon County, Tennessee, for leave to file an amicus brief in support of plaintiffs' Rule 11 application is granted)</i> (Order Filed 10-28-13)
Paul J. Frankenberg, III v. River City Resort, Inc., Et Al. E2012-01106-SC-R11-CV	Hamilton County Chancery Court Judge W. Frank Brown, III No. 05-1271	Frierson, J Affirmed	Rule 11	Denied: Application of Paul J. Frankenberg, III (Order filed 10-28-13)
Dexter F. Johnson v. State of Tennessee E2013-01106-SC-R11-PC	Hamilton County Criminal Court Judge Barry A. Steelman No. 202013	Witt, J Ogle, J Thomas, J Order Denied	Rule 11	Denied: Application of Dexter F. Johnson <i>(From the order of the Court of Criminal Appeal filed July 25, 2013)</i> (Order filed 10-28-13)

Jackson

State of Tennessee v. Terry Fossett W2012-00885-SC-R11-CD	Shelby County Criminal Court Judge John T. Fowlkes, Jr. No. 11-04212	Glenn, J Affirmed	Rule 11	Denied: Application of Terry Fossett (Order filed 10-25-13)
State of Tennessee v. Marquon Lanorris Green W2012-01654-SC-R11-CD	Madison County Circuit Court Judge Roy B. Morgan No. 11-360	Glenn, J Affirmed	Rule 11	Denied: Application of Marquon Lanorris Green (Order filed 10-25-13)

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

DARLENE MATTOX v. LAWSON ELECTRIC COMPANY ET AL.

**Chancery Court for Dickson County
No. 2011CV316**

No. M2013-01444-SC-R9-WC

ORDER

Upon consideration of the Rule 9 application for interlocutory appeal of Lawson Electric Company and Westfield Insurance Company and the record before us, the application is granted.

Pursuant to Tennessee Supreme Court Rule 51, section 4, the Clerk is directed to place this matter on the docket of the Special Workers' Compensation Appeals Panel for oral argument upon the completion of briefing.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**MACK PHILLIPS ET AL. v. MONTGOMERY COUNTY, TENNESSEE
ET AL.**

**Circuit Court for Montgomery County
No. MCCCCVRM112535**

No. M2012-00737-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Mack Phillips and LeAnn Phillips and the record before us, the application is granted.

The Clerk is directed to place this matter on the docket for oral argument upon the completion of briefing.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

BOBBY GLEN CROCKER v. STATE OF TENNESSEE

**Circuit Court for Carroll County
No. 05CR98**

No. W2012-00960-SC-R11-PC

ORDER

This case is before the Court on the Tenn. R. App. P. 11 application filed by Bobby Glen Crocker. The State did not file an answer to the application, but submitted a letter indicating that the State relies on its brief filed in the Court of Criminal Appeals.

The issue presented by this appeal is whether due process requires the tolling of the statute of limitations for filing petitions for post-conviction relief because of Mr. Crocker's incompetence. The trial court, applying the competency standard set out in *State v. Nix*, 40 S.W.3d 459, 463 (Tenn. 2001), found in pertinent part:

Although the Petitioner has a low IQ, he has failed to show by *clear and convincing evidence* that he lacked the mental capacity to manage his personal affairs and to understand his legal rights during the year following finality in his case. Any mental defect of the Petitioner, which existed following the guilty plea, did not rise to this level.

Based on this finding, the trial court held that the one-year statute of limitations for filing a petition for post-conviction relief was not tolled and that Mr. Crocker's petition was untimely. Accordingly, the trial court granted the State's motion to dismiss the petition.

Approximately nine months after the trial court's dismissal of the petition, we released our decision in *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478 (Tenn. 2013) ("*Reid*"). In *Reid*, we abandoned the *State v. Nix* standard for determining whether due process requires tolling of the one-year post-conviction statute of limitations based on a petitioner's alleged incompetency. *Reid*, 396 S.W.3d at 511. As we went on to state in *Reid*:

In the interest of uniformity and simplicity, we have determined that the standards and procedures in Tenn. Sup. Ct. R. 28, § 11 should henceforth be used in all post-conviction proceedings, *including those currently awaiting decision*, in which the issue of the petitioner’s competency is properly raised. Thus, Tenn. Sup.

Ct. R. 28, § 11 will apply not only when a petitioner seeks to withdraw a previously-filed petition for post-conviction relief, but also when a petitioner seeks to toll the statute of limitations in Tenn. Code Ann. § 40-30-102(a) due to incompetency, and when a “next friend” seeks to have the prisoner declared incompetent.

Reid, 396 S.W.3d at 512 (emphasis added). We added that, “[t]o provide structure to its Tenn. Sup. Ct. R. 28, § 11 analysis, the trial court should employ the three-step *Rumbaugh* test.” *Id.* at 513 (citing *Rumbaugh v. Procunier*, 753 F.2d 395, 398-99 (5th Cir. 1985)).

Following our directive, the Court of Criminal Appeals applied the standard adopted in *Reid*, as well as the earlier *Nix* standard (in effect at the time of the trial court’s ruling), to Mr. Crocker’s appeal. The intermediate appellate court ultimately concluded that “the lack of any specific proof in this case regarding the Petitioner’s ability to understand his legal position and the options available to him or his ability to make a rational choice among his options would support the post-conviction court’s dismissal of the petition *under either standard*.” *Crocker v. State*, No. W2012-00960-CCA-R3-PC, 2013 WL 2327092, at *6 (Tenn. Crim. App. May 28, 2013) (emphasis added).

One of the issues Mr. Crocker raises in his Tenn. R. App. P. 11 application is “[w]hether the Court of Criminal Appeals erred in not remanding Appellant’s case for a new hearing with the issue of competency to be determined by the new standard” adopted in *Reid*. As Mr. Crocker contends in his application:

Petitioners who were in the appellate process when *Reid* was decided were left at a disadvantage. A new standard was adopted by this Court and the Court of Criminal Appeals was directed to apply this new standard to pending cases[,] but the petitioners/appellants were not afforded an opportunity to have a hearing and present evidence to support their claim under the new standard.

Mr. Crocker's application therefore requests "that his case be remanded so that he will have the opportunity to present all evidence applicable to the new standard to support his position."

Because Mr. Crocker's appeal was pending in the Court of Criminal Appeals at the time we decided *Reid*, we agree that he should be afforded the opportunity to present additional evidence concerning his alleged incompetency in light of the standard we adopted in *Reid*. Therefore, we grant Mr. Crocker's application for permission to appeal, vacate the judgment of the Court of Criminal Appeals, and remand this case to the trial court for further proceedings. On remand, the trial court shall conduct an additional hearing in which

Mr. Crocker and the State may further develop the record in light of the standard adopted in *Reid*. By remanding the case to the trial court, however, we express no opinion as to the ultimate disposition of Mr. Crocker's petition.

PER CURIAM