

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

FILED

08/18/2022

Clerk of the  
Appellate Courts

**CARLOS STOKES v. STATE OF TENNESSEE**

**Criminal Court for Shelby County**

**No. 16-05861**

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**No. W2022-01049-CCA-R10-PC**

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**ORDER**

This matter is before the Court upon the application of the Petitioner, Carlos Stokes, for an extraordinary appeal pursuant to Tennessee Rule of Appellate Procedure 10. The Petitioner seeks appellate review of the post-conviction court's denial of his unopposed motion for a continuance of the post-conviction evidentiary hearing. The Petitioner also asserts that his case should "be reassigned to a different judge on remand" due to statements in the post-conviction court's order that the Petitioner contends represent "pre-judgment of certain claims," a "material mischaracterization of the proceedings," and "gratuitous criticism of the Petitioner's counsel." The State has filed a response in opposition to the application.

An extraordinary appeal may be sought from an interlocutory order pursuant to Tennessee Rule of Appellate Procedure 10 "on application and in the discretion of the appellate court alone . . . (1) if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal as otherwise provided in these rules." Tenn. R. App. P. 10(a). Such circumstances "are very narrowly circumscribed to those situations in which the trial court . . . has acted in an arbitrary fashion, or as may be necessary to permit complete appellate review on a later appeal." Tenn. R. App. P. 10, Adv. Comm'n Cmt. In determining whether an extraordinary appeal will lie, the Tennessee Supreme Court has held that this Court should consider whether

the challenged ruling represents a fundamental illegality, fails to proceed according to the essential requirements of the law, is tantamount to the denial of a party's day in court, is without legal authority, is a plain and palpable abuse of discretion, or results in either party losing a right or interest that may never be recaptured.

*Gilbert v. Wessels*, 458 S.W.3d 895, 898 (Tenn. 2014) (citing *State v. McKim*, 215 S.W.3d 781, 791 (Tenn. 2007); *State v. Willoughby*, 594 S.W.2d 388, 392 (Tenn. 1980)).

The Petitioner, along with codefendants Jordan Clayton and Branden Brookins, were convicted for first degree murder and other offenses related to the drive-by shooting of a seven-year-old girl. See *State v. Jordan Clayton, Carlos Stokes, and Branden Brookins*, No. W2018-00386-CCA-R3-CD, 2019 WL 3453288 (Tenn. Crim. App. July 31, 2019), *perm. app. denied* (Tenn. Dec. 10, 2019). The Petitioner, through counsel, filed a timely petition for post-conviction relief on December 4, 2020. The State filed its response on February 8, 2021.

On July 6, 2022, the post-conviction court directed counsel to set a date for the evidentiary hearing prior to the expiration of the judge's term at the end of August 2022 or to file a motion showing cause why the matter should be continued. On July 11, 2022, counsel filed a continuance motion, asserting that he needed additional time to complete his investigation, including interviewing a witness who had pending criminal charges; that his co-counsel was out on maternity leave; and that the State did not oppose the motion. On August 3, 2022, the post-conviction court issued an order denying the requested continuance and directing counsel to set the hearing on either August 25 or 29, 2022. The post-conviction court stated that it had "given counsel ample time to issue subpoenas, enter transfer orders for inmates that he may wish to testify, and to prepare for a hearing." The post-conviction court discounted counsel's need for the assistance of co-counsel. The post-conviction court also stated that it was denying the continuance "as a professional courtesy to this Court's successor."

As an initial matter, the Petitioner did not comply with Tennessee Supreme Court Rule 10B to seek recusal of the post-conviction judge, and that issue is not properly before this Court. See Tenn. Sup. Ct. R. 10B, § 2, Adv. Comm. Cmt. With regard to the post-conviction court's denial of the Petitioner's motion for a continuance, this Court reviews such decisions for an abuse of discretion. See *State v. Hester*, 324 S.W.3d 1, 35 (Tenn. 2010)). The decision to deny a continuance will be reversed by this Court "only if it appears that the trial court abused its discretion to the prejudice of the defendant." *State v. Odom*, 137 S.W.3d 572, 589 (Tenn. 2004) (citing *State v. Hines*, 919 S.W.2d 573, 579 (Tenn. 1995)).

In this case, counsel asserted that he needs the assistance of co-counsel due to the seriousness and complexity of this matter but that she would be out on maternity leave through September. Confusingly, the post-conviction court discounted counsel's need for the assistance of co-counsel while simultaneously questioning the effectiveness of counsel's representation. Additionally, counsel asserted that the prosecutor handling the case did not oppose the request for a continuance. Finally, much of the pendency of this case has occurred during the COVID-19 pandemic and the attendant restrictions placed upon the judicial system. Under the narrow circumstances of this case, this Court

concludes that the trial court abused its discretion in denying the Petitioner's requested continuance beyond the term of the post-conviction judge.

Accordingly, it is ORDERED that the Petitioner's application for extraordinary appeal is hereby GRANTED. In the interest of expediting this matter, pursuant to Tennessee Rules of Appellate Procedure 2 and 10(d), we will resolve this appeal on the basis of the application and response before us without further briefing or argument by the parties. The post-conviction court's order is hereby REVERSED, and this case is REMANDED to the post-conviction court for further proceedings in accordance with this order.

JUDGE CAMILLE R. McMULLEN  
PRESIDING JUDGE JOHN EVERETT WILLIAMS  
JUDGE JOHN W. CAMPBELL