REL: October 8, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0276

Kristen Marie Dees

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-20-2525)

McCOOL, Judge.

Kristen Marie Dees appeals the Mobile Circuit Court's order denying her petition seeking a writ of mandamus directed to the Mobile District Court. For the reasons set forth herein, we affirm.

Facts and Procedural History

In December 2019, the State filed a complaint in the district court alleging that Dees had committed theft of property in the third degree, a Class D felony. See § 13A-8-4.1, Ala. Code 1975. Dees subsequently filed a motion for discovery in which she sought an order directing the State to provide her with certain discovery. In response, the State argued that the district court's limited jurisdiction over Dees's felony charge did not include the authority to issue a discovery order. The district court denied Dees's discovery motion and scheduled a preliminary hearing. Dees filed a motion to reconsider, arguing that Rule 16, Ala. R. Crim. P., which governs discovery, "does not contemplate that [a discovery] request cannot be filed in district court." (C. 32.) Dees also cited caselaw from this Court that, she said, authorizes a district court to order discovery at the preliminary-hearing stage of a felony case. The district court denied Dees's motion to reconsider.

A few days before the preliminary hearing was originally scheduled to occur, Dees, relying on the arguments she had made in the district court, filed in the circuit court a petition for a writ of mandamus in which she argued that the district court erred by denying her requested discovery order. In response, the State noted that the district court's authority in felony cases is limited under § 12-12-32(b), Ala. Code 1975, to receiving guilty pleas in noncapital cases and to holding preliminary hearings. Thus, the State argued, Dees could not demonstrate that she had a clear legal right to relief because, the State argued, the authority to order discovery is not encompassed within those two limited functions. The State further argued that, even if discovery is permitted in the district court, the court has discretion in determining whether to order discovery and that Dees was not entitled to mandamus relief because, it said, she had not demonstrated an abuse of that discretion.

On January 12, 2021, the circuit court held a hearing on Dees's petition for a writ of mandamus. Following that hearing, the circuit court issued an order denying Dees's petition on the basis that she had not demonstrated a clear legal right to discovery in the district court. In

support of its ruling, the circuit court cited § 12-12-32(b) and concluded that, " 'because a district court's jurisdiction is limited in felony cases and the proceedings within the district court's limited jurisdiction do not involve discovery, a district court does not have authority to issue discovery orders in felony cases.' " (C. 75 (quoting State v. Brown, 259 So. 3d 655, 661 (Ala. 2018) (Stuart, C.J., concurring the result)).) Dees filed a timely notice of appeal with this Court.

Standard of Review

> " 'The circuit court's order issuing [or denying] a writ of mandamus involves only questions of law. Therefore, the same standard of review applies to both the appeal and petition: a de novo standard. See, e.g., George v. Sims, 888 So. 2d 1224, 1226 (Ala. 2004) (observing in a case in which the plaintiff sought a petition for mandamus that "[b]ecause the facts are undisputed and we are presented with pure questions of law, our standard of review is de novo.").'

"Regions Bank v. Reed, 60 So. 3d 868, 877 (Ala. 2010). We note that, in Ex parte Miles, 841 So. 2d 242, 243-44 (Ala. 2002), we stated:

> " ' " 'A writ of mandamus is an extraordinary remedy, and it will be "issued only when there is: 1) a clear legal right in the petitioner to the order

> sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court." Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal. Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991).' "
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> " '(Quoting Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998).) Moreover, "[t]he burden is on the petitioner who seeks a writ of mandamus to show that each element required for issuance of the writ has been satisfied." Ex parte Patterson, 853 So. 2d 260, 263 (Ala. Civ. App. 2002) (citing Ex parte Consolidated Publ'g Co., 601 So. 2d 423 (Ala. 1992)).'
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> "Ex parte Serio, 893 So. 2d 1148, 1150 (Ala. 2004)."

Harris v. Owens, 105 So. 3d 430, 433 (Ala. 2012). " 'Mandamus is the "proper means of review to determine whether a trial court has abused its discretion in ordering discovery, in resolving discovery matters, and in issuing discovery orders so as to prevent an abuse of the discovery process by either party." ' " Hooks v. State, 822 So. 2d 476, 478 (Ala. Crim. App.

2000) (quoting Ex parte Compass Bank, 686 So. 2d 1135, 1137 (Ala. 1998), quoting in turn Ex parte Mobile Fixture & Equip. Co., 630 So. 2d 358, 360 (Ala. 1993)).

Discussion

On appeal, Dees argues that the circuit court erred by concluding that she did not have a clear legal right to discovery in the district court. In support of her claim, Dees relies on State v. Brown, 259 So. 3d 683 (Ala. Crim. App. 2017) ("Brown I").

In Brown I, Kentory Dashawn Brown had been charged with burglary and theft offenses, and, before a preliminary hearing occurred in the district court, Brown moved to have the State provide all discovery permitted by Rule 16.1, Ala. R. Crim. P. The district court granted Brown's motion, but, on the date the preliminary hearing was scheduled to occur, the State had not provided the requested discovery. Thus, Brown sought a continuance, which was granted, but when the parties appeared for the rescheduled preliminary hearing, the State had yet to provide the requested discovery because, according to the State, discovery was neither proper nor allowed at that stage of the proceedings. The district court

apparently did not address the discovery issue at that time and proceeded with the preliminary hearing, and Brown's cases were subsequently bound over to a grand jury.

Three days after the preliminary hearing, the district court ordered the State to provide Brown with discovery within seven days. In response, the State petitioned the circuit court for a writ of mandamus directing the district court to vacate the discovery order. The circuit court denied the State's petition, and the State then petitioned this Court for a writ of mandamus, arguing that, "in a non-capital case, the district court has authority only to accept a guilty plea and to hold preliminary hearings." Brown I, 259 So. 3d at 685. Brown countered with the argument that § 12-12-32(b) impliedly vests a district court with the authority to perform other functions, including ordering discovery, in conjunction with its limited jurisdiction in felony cases. Brown also argued that "nothing in Rule 16 limits its applicability only to circuit courts." Id. at 686. In concluding that the State had not satisfied the "heavy burden" required to obtain mandamus relief, id. at 688, this Court stated:

"This Court has held: ' "In determining the meaning of a statute or a court rule, this Court looks first to the plain meaning of the words as they are written." Ex parte Ward, 957 So. 2d 449, 452 (Ala. 2006).' W.B.S. v. State, 192 So. 3d 417, 419 (Ala. Crim. App. 2015). ' "As an intermediate appellate court, this Court may interpret and apply the existing rules of procedure, but it may not rewrite them." Ankrom v. State, 152 So. 3d 373, 391-92 (Ala. Crim. App. 2011) (Welch, J., dissenting).' 192 So. 3d at 420 (emphasis omitted). In Alabama, district courts and circuit courts exercise concurrent jurisdiction to receive guilty pleas in prosecutions of offenses defined by law as felonies not punishable by a sentence of death. Further, district courts and circuit courts have jurisdiction to hold preliminary hearings in prosecutions of felonies not punishable by a sentence of death. See § 12-12-32(b), Ala. Code 1975, and Rule 2.2(a), Ala. R. Crim. P. Nothing in the plain language of § 12-12-32(b) or Rule 2.2(a), Ala. R. Crim. P., bars discovery by Brown. There is a section in Rule 16.1 that bars discovery of certain types of matters, i.e., internal State documents made by the prosecutor or by law-enforcement agents in connection with the investigation or prosecution of the case or statements made by State witnesses or prospective State witnesses. See Rule 16.1(e), Ala. R. Crim. P. Here, the circuit court's order granting discovery does not allow the discovery of such material.

"Although the State attempts to argue that district courts are limited solely to receiving pleas of guilty in felony cases and to holding preliminary hearings in prosecutions for felonies not involving a sentence of death, to so strictly limit the scope of the district court's jurisdiction in conducting such matters flies in the face of the district court's authority to function as a court whose jurisdiction is concurrent with the circuit court. Both courts, for example, may appoint counsel

> and may determine indigency of the defendant. See Rules 6.1 and 6.3, Ala. R. Crim. P.
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> "It is well established that '"[d]iscovery matters are within the sound discretion of the trial judge. ... The court's judgment on these matters will not be reversed absent a clear abuse of discretion and proof of prejudice resulting from the abuse."' Smith v. State, 112 So. 3d 1108, 1136 (Ala. Crim. App. 2012) (quoting Belisle v. State, 11 So. 3d 256, 277 (Ala. Crim. App. 2007)). Although there is no authority for discovery in the preliminary hearing stage, Rowland v. State, 460 So. 2d 282, 284 (Ala. Crim. App. 1984), there is also no prohibition. The material that the district court and the circuit court ordered produced is permitted by Rule 16.1. It is well established that '"[a] writ of mandamus will issue to compel the exercise of a trial court's discretion, but it will not issue to control or to review a court's exercise of its discretion unless an abuse of discretion is shown."' Ex parte Alfa Mut. Ins. Co., 212 So. 3d 915, 918 (Ala. 2016) (quoting Ex parte Yarbrough, 788 So. 2d 128, 132 (Ala. 2000)).
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> "Based on the above considerations, there was no abuse of discretion by the district court in its ... discovery order or by the circuit court in its ... discovery order. Although the right to discovery is not unlimited, the discovery ordered in this case is within the guidelines of Rule 16.1, Ala. R. Crim. P., and is proper."

259 So. 3d at 687-88 (emphasis added).

Following this Court's decision in Brown I, the State petitioned the Alabama Supreme Court for a writ of mandamus directing the circuit court to instruct the district court to vacate its discovery order, and the

Alabama Supreme Court granted the State's petition in State v. Brown, 259 So. 3d 655 (Ala. 2018) ("Brown II"). However, in holding that the State had demonstrated a clear legal right to relief, the Brown II Court did not take issue with this Court's conclusion that a district court has the implicit authority to order discovery at the preliminary-hearing stage of a felony case. Rather, the Brown II Court held that such authority terminates once the preliminary hearing is complete. See id. at 659 ("In the present case, the preliminary hearing was completed before the district court issued the discovery order ...; thus, that order could not have been issued pursuant to the district court's authority to hold preliminary hearings.").[1] Thus, collectively, Brown I and Brown II clarify that a district court has the authority to order discovery in felony cases pursuant to its authority to hold a preliminary hearing but that such authority terminates once the preliminary hearing is complete.

[1]The Brown II Court also held that the district court did not have the authority to order discovery pursuant to its authority to accept a guilty plea because, at the time of the discovery order, the court "could not yet exercise its function of receiving a guilty plea." Brown II, 259 So. 3d at 660.

On appeal, Dees argues that this case has a different procedural posture than that of Brown I because she "has not been indicted or had a preliminary hearing, so the district court retains jurisdiction over her case."[2] (Dees's brief, p. 14.) Thus, relying on Rule 16.1, which requires the State to provide certain discovery, Dees argues that the district court did not have "the discretion to deny the right to discovery." (Id. at 18.)

However, although Brown I authorizes discovery in the district court at the preliminary-hearing stage of a felony case, nothing in Brown I requires discovery at that time. Rather, Brown I held only that discovery is not prohibited in the district court, which implies that there is no absolute right to discovery in that court. This conclusion is strengthened by the fact that this Court held in Brown I that the district court had not abused its discretion by ordering discovery; if the district court had the discretion to order discovery, it stands to reason that the court also had

[2]The preliminary hearing was originally scheduled to occur on November 9, 2020, and there is no order in the record rescheduling the preliminary hearing for a later date. However, the State contends that the district court rescheduled the preliminary hearing for February 18, 2021 (C. 87, n.1), which was after Dees filed a notice of appeal with this Court.

the discretion not to order discovery. Furthermore, even when Rule 16.1 is applicable, the rule is directed to the prosecutor's obligation to provide certain discovery; the rule does not require a court to order discovery, and although a court may order discovery if a prosecutor fails to comply with Rule 16.1, a court also has other means of sanctioning the State. See Ex parte State, 287 So. 3d 384, 389 (Ala. 2018) (noting that Rule 16.5, Ala. R. Crim. P., provides a court "wide discretion in considering the manner and nature of relief it affords a defendant who has been denied discovery"). In short, then, whether to order discovery at the preliminary-hearing stage of a felony case is a matter within the district court's discretion, as are other discovery issues. See Ex parte Crawford Broad. Co., 904 So. 2d 221, 224 (Ala. 2004) (noting that "discovery matters are within a trial court's sound discretion").

Of course, mandamus relief "will lie to compel the exercise of discretion" but will not lie "to compel its exercise in a particular manner except where there is an abuse of discretion." Ex parte Wright, 166 So. 3d 618, 623 (Ala. 2014) (citations omitted). Thus, to obtain mandamus relief on a discovery issue, the petitioner "has an affirmative burden" of

demonstrating that the court "clearly exceeded its discretion." Ex parte Fairfield Nursing & Rehab. Ctr., LLC, 183 So. 3d 923, 928 (Ala. 2015) (citations omitted). See Ex parte Willimon, 299 So. 3d 934, 938 (Ala. 2020) (noting that, to obtain mandamus relief on a discovery issue, " ' " ' "there [must be] a showing that the trial court clearly exceeded its discretion" ' " ' " (quoting Ex parte Fairfield Nursing & Rehab. Ctr., 183 So. 3d at 927, quoting other cases) (emphasis added)).

On appeal, however, Dees makes no attempt to demonstrate that the district court abused its discretion by refusing to order the State to provide her with discovery, nor did she make such an attempt in her petition to the circuit court. Rather, Dees relied in the circuit court, and relies in this Court, on her contention that the district court was required to order discovery under Rule 16.1. (C. 12 ("The district court had no authority to deny [Dees's] written request for discovery.").) In other words, Dees has not demonstrated, or even attempted to demonstrate, an abuse of discretion -- because she does not believe the discretion existed in the first place. As we have already concluded, that belief is incorrect, and because Dees has not attempted to demonstrate that the district court

abused its discretion by denying her discovery motion, she has not demonstrated that she was entitled to mandamus relief. Ex parte Fairfield Nursing & Rehab. Ctr., supra; Ex parte Willimon, supra. Moreover, we note that almost all of Dees's requested discovery was not encompassed within Rule 16.1 (C. 18-19), which is limited to the defendant's written and oral statements, any accomplice's written and oral statements, certain documents and tangible objects, and reports of any examinations and tests. That fact tends to support the conclusion that the district court did not abuse its discretion by refusing to order the State to provide Dees with discovery.

Conclusion

Dees has not demonstrated that she had a clear legal right to discovery in the district court. Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Kellum, Cole, and Minor, JJ., concur. Windom, P.J., concurs in the result.