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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

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CR-20-0810

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Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama v. Justin Simpson)

Dallas Circuit Court  
(CC-15-117)

PER CURIAM.

The State of Alabama filed this petition for a writ of mandamus requesting this Court to direct Judge Marvin W. Wiggins to vacate his

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June 12, 2021, order granting a new trial for Justin Simpson. We grant the petition and issue the writ.

According to the petition, Simpson was indicted for capital murder in the death of Willie Berry and for felony murder in the death of Lester Jones. Simpson is alleged to have aided and abetted Jones in the robbery and murder of Berry. Jones, however, was shot and killed by Berry during the robbery. The charges against Simpson were brought to trial on March 7, 2019. At the close of evidence, Simpson moved for a judgment of acquittal. Although he denied Simpson's motion, Judge Wiggins expressed his doubts regarding the credibility of one of the State's primary witnesses. Specifically, Judge Wiggins stated:

"As I told y'all earlier, I do think you've proven the fact that there were two persons killed. In my opinion, there is nothing to support that this defendant was involved in the murder. Even though I may accept Mr. Stevenson's testimony, he lacks all evidentiary credibility or reliability. There's nothing that I can see that I would trust what he said. But out of an abundance of caution and due to the fact that this is a capital murder case, I will deny the motion [for a judgment of acquittal] at this juncture and allow the case to go to the jury. That's the only reason, because it's a capital murder case, and out of an abundance of caution, I'm going to let it go."

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On March 11, 2019, a Dallas County jury found Simpson guilty of capital murder in the death of Willie Berry and of felony murder in the death of Lester Jones. After the jury was dismissed, Judge Wiggins stated:

"Lawyers, one thing I am going to do is I'm going to uphold my word, as I told y'all off the record what I intend to do. You file your motion [for a new trial]. The Court's going to grant the motion. Y'all file it, and we'll take it up."

Simpson filed a motion for a judgment of acquittal or, in the alternative, motion for a new trial on March 25, 2019. The hearing on the motion was continued several times because of conflicts, the reassignment of the case as a result of Judge Wiggins's suspension from the bench during the pendency of charges against him before the Alabama Court of the Judiciary, and the Covid-19 pandemic. Finally, on August 31, 2020, a hearing was held via Zoom<sup>1</sup> on Simpson's motion. The parties submitted proposed orders in September 2020. On June 12, 2021, Judge Wiggins, whose suspension had been lifted, granted Simpson's motion for a new

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<sup>1</sup>"Zoom" is an internet platform for video conferencing.

trial.<sup>2</sup> However, sentence had not been pronounced upon Simpson before Judge Wiggins granted his new trial motion.

In its petition, the State argues that the writ of mandamus should be issued because Judge Wiggins granted the motion for a new trial before sentencing Simpson and because he placed himself in the place of the jury by rejecting the jury's verdict and reweighing the evidence in favor of Simpson.

In order to obtain mandamus relief, a party must establish four prerequisites:

"Mandamus is an extraordinary remedy and will be granted only where 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 Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991). This Court will not issue the writ of mandamus where the petitioner has '"full and adequate relief"' by appeal. State v. Cobb, 288 Ala. 675, 678, 264 So. 2d 523, 526 (1972) (quoting State v. Williams, 69 Ala. 311, 316 (1881))."

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<sup>2</sup>Subsequent to the granting of the motion for new trial, the State moved the trial court to stay all further proceedings so that it may petition this Court for a writ of mandamus. Judge Wiggins granted that motion on June 25, 2021.

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Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003). The State has a limited right of appeal in a criminal case. See Ex parte King, 23 So. 3d 77 (Ala. 2009).

"The State's power to appeal from an adverse ruling in a criminal case is governed by § 12-12-70(c), Ala. Code 1975 (providing that an appeal may be taken from a judgment declaring an ordinance or statute invalid); § 12-22-91, Ala. Code 1975 (providing that an appeal may be taken from a judgment holding an indictment or information unconstitutional); and by Rule 15.7, Ala. R.Crim. P. (providing that appeals may be taken from certain pre-trial orders)."

Ex parte Sullivan, 779 So. 2d 1157, 1160 (Ala. 2000). Therefore, the State does not have a right to appeal Judge Wiggins's order granting Simpson's motion for a new trial. The State has thus established that it lacks another adequate remedy.

A petition for a writ of mandamus must be filed within a presumptively reasonable time, which, according to Rule 21(a)(3), Ala. R. App. P., is "the same as the time for taking an appeal." For petitions seeking review of a pretrial order of the trial court, the presumptively reasonable time is seven days – the time permitted to appeal pursuant to Rule 15.7(b), Ala. R. Crim. P. However, the presumptively reasonable

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time for the State to petition for a writ of mandamus relating to the granting of a motion for new trial is 42 days. See State v. Ellis, 165 So. 3d 576 (Ala. 2014). The State filed its petition for a writ of mandamus on July 23, 2021, which was within 42 days of the issuance of Judge Wiggins's order granting the motion for a new trial. The State, therefore, has properly invoked the jurisdiction of this Court.

We now turn to whether the State has established the first two prerequisites for the issuance of a writ of mandamus, i.e., a clear legal right to the relief sought and a refusal by Judge Wiggins to perform an imperative duty. Rule 24.1(a), Ala. R. Crim. P., states: "When the defendant has been sentenced, the court, on motion of the defendant or on its own motion, may order a new trial." "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); see also Alabama State Bar v. Caffey, 938 So. 2d 942 (Ala. 2006). The plain language of Rule 24.1(a), Ala. R. Crim. P., requires a trial court to pronounce sentence upon a defendant before it can order a new trial. In his answer to the State's petition for a writ of mandamus, Simpson

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asserts that if Judge Wiggins is required to sentence him before ordering a new trial, the failure to do so is harmless. We disagree. To allow Judge Wiggins's order to stand would be contradictory to the plain language of Rule 24.1(a). "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. 2d 373, 392 (Ala. Crim. App. 2011) (Welch, J., dissenting). Because the plain language of Rule 24.1(a), requires the pronouncement of sentence before a new trial may be granted, the State has established it has a clear legal right to the relief it seeks.

Finally, we must consider whether Judge Wiggins has refused to perform an imperative duty. After the jury returned its verdict and Judge Wiggins announced that he intended to grant Simpson's motion for a new trial once it was filed, the prosecutor asked Judge Wiggins if Judge Wiggins did not need to sentence Simpson before ordering a new trial. Judge Wiggins replied: "No sir. I'm not going to sentence him. I'm going to issue my order. I'm not going to sentence him." Judge Wiggins clearly

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refused to perform an imperative duty by ordering the new trial before pronouncing sentence upon Simpson.

Because Judge Wiggins erred in ordering a new trial before pronouncing sentence upon Simpson, this Court pretermits consideration of whether the State is entitled to mandamus relief upon its other argument.

The State has established the prerequisites for the issuance of a writ of mandamus. Accordingly, this petition for a writ of mandamus is granted and the writ issued. Judge Wiggins is directed to set aside his June 12, 2021, order granting Simpson's new-trial motion.

**PETITION GRANTED; WRIT ISSUED.**

Windom, P.J., and Kellum, McCool, Cole, and Minor, JJ., concur.