REL: 04/27/2012

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2011-2012

CR-10-0595

Joseph W. Hutchinson III

v.

State of Alabama

Appeal from Choctaw Circuit Court
(CC-00-38)

On Return to Remand

JOINER, Judge.

Joseph W. Hutchinson III appeals two orders of the Choctaw Circuit Court approving only part of the attorney-fee declarations Hutchinson submitted for his representation of

Medell Banks, Jr., in a capital-murder case. We reverse and remand.

Facts and Procedural History

This appeal was transferred to this Court by the Supreme Court. Hutchinson v. State, 66 So. 3d 220 (Ala. 2010) ("Hutchinson I").[1] On September 30, 2011, we remanded this matter to the Choctaw Circuit Court for that court to enter an order explaining its decision to approve only part of the attorney-fee declarations submitted by Hutchinson. See Hutchinson v. State, [Ms. CR-10-0595, Sept. 30, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011) ("Hutchinson II"). We specifically instructed the circuit court to consider those factors listed in Pharmacia Corp. v. McGowan, 915 So. 2d 549, 552-53 (Ala. 2004), that it deemed relevant in evaluating the reasonableness of Hutchinson's attorney-fee declarations. We also stated that the circuit court should consider "the possible punishment that could be imposed on the indigent defendant." Hutchinson II, ___ So. 3d at ___.

[1]The facts and complex procedural history of this case are set forth in this Court's September 30, 2011, opinion remanding this matter and will not be repeated here. See Hutchinson v. State, [Ms. CR-10-0595, Sept. 30, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011).

On remand, the circuit court entered the following order:

"The case of State of Alabama versus [Medell] Banks concluded with a negotiated plea to a lesser charge, on January 10th, 2003. On December 12, 2008, nearly six years later, Mr. Hutchinson filed his bill. By that time Judge McPhearson, who had presided over the Banks case, had retired. His successor. Judge Baxter, was within a month of retirement and took no action on the fee petition. Judge McCorquodale was appointed to Judge Baxter's place, and recused from hearing Mr. Hutchinson's fee petition. It then fell to me to determine the reasonableness of Mr. Hutchinson's fee petition. After consideration of all of the legally mandated factors, I concluded that the amount claimed should be reduced. The reasons are as follows:

"1. Mr. Hutchinson was not timely in filing his fee petition, and offered no acceptable reason for his lack of diligence. If Mr. Hutchinson had filed promptly, the Judge that presided over the case, and who would have been in the best position to evaluate the reasonableness of the hours claimed, would have ruled on the fee petition.

"2. Mr. Hutchinson committed two ethical violations. First, his wife was employed by the Choctaw County Commission to handle accounting and billing for the Solid Waste Program. Mr. Hutchinson had her include with the Solid Waste bills, a mail out soliciting funds for Medal Banks' defense. These were mailed out at the county's expense, without any authorization by the Court or the County Commission.

"Second, Mr. Hutchinson took a medical report to Judge McPhearson's house, and engaged in an ex parte conversation with him, during the pendency of the Banks case, without the knowledge of the State.

"3. Mr. Hutchinson's testimony as to the out of court hours worked was not credible. In any event,

> the hours claimed for out of Court work are in excess of a reasonable amount. Even taking into account the complexity of the Banks case, and the favorable result reached, I still conclude that the hours claimed for out of Court work and office overhead expense were excessive. Mr. Hutchinson has a history, reaching back over twenty years, of being consistently far higher in his billing for appointed work than any other attorney in Choctaw County.
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> "In setting Mr. Hutchinson's fee, I considered the factors set out above and based my decision on the hours claimed by co-counsel, Mr. Evans. I then increased the amounts in consideration of Mr. Hutchinson having been the lead attorney."

(Order on Return to Remand, pp. 1-2.)

Standard of Review

> "'The determination of whether an attorney fee is reasonable is within the sound discretion of the trial court and its determination on such an issue will not be disturbed on appeal unless in awarding the fee the trial court exceeded that discretion. State Bd. of Educ. v. Waldrop, 840 So. 2d 893, 896 (Ala. 2002); City of Birmingham v. Horn, 810 So. 2d 667, 681-82 (Ala. 2001); Ex parte Edwards, 601 So. 2d 82, 85 (Ala. 1992), citing Varner v. Century Fin. Co., 738 F.2d 1143 (11th Cir. 1984).
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> "'This Court has set forth 12 criteria a court might consider when determining the reasonableness of an attorney fee:
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> > "'"[T]he nature and value of the subject matter of the employment; (2) the learning, skill, and labor requisite to its proper discharge; (3) the time consumed; (4) the professional experience and reputation of the attorney; (5) the weight of his responsibilities; (6) the measure of

> success achieved; (7) the reasonable expenses incurred; (8) whether a fee is fixed or contingent; (9) the nature and length of a professional relationship; (10) the fee customarily charged in the locality for similar legal services; (11) the likelihood that a particular employment may preclude other employment; and (12) the time limitations imposed by the client or by the circumstances."

> "'Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988). These criteria are for purposes of evaluating whether an attorney fee is reasonable; they are not an exhaustive list of specific criteria that must all be met. Beal Bank v. Schilleci, 896 So. 2d 395, 403 (Ala. 2004), citing Graddick v. First Farmers & Merchants Nat'l Bank of Troy, 453 So. 2d 1305, 1311 (Ala. 1984).'"

Kiker v. Probate Court of Mobile Cnty., 67 So. 3d 865, 867-68 (Ala. 2010) (quoting Pharmacia Corp. v. McGowan, 915 So. 2d 549, 552–53 (Ala. 2004)).

> "[N]ot all the above-quoted factors will be relevant in an indigent-defense case. Even so, a court evaluating the reasonableness of a fee in an indigent-defense case should consider those factors that are relevant under the particular circumstances. In addition to those factors, the possible punishment that could be imposed on the indigent defendant should be considered in evaluating the reasonableness of a fee in an indigent-defense case. See, e.g., Hulse v. Wilfvat, 306 N.W.2d 707, 711 (Iowa 1981); Duffy v. Circuit Court for the Seventh Judicial Circuit, 2004 S.D. 19, 676 N.W.2d 126, 134 (2004)."

Hutchinson II, ___ So. 3d at ___.

Additionally,

> "'We defer to the trial court in an attorney-fee case because we recognize that the trial court, which has presided over the entire litigation, has a superior understanding of the factual questions that must be resolved in an attorney-fee determination. Horn, 810 So. 2d at 681–82, citing Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). Nevertheless, a trial court's order regarding an attorney fee must allow for meaningful appellate review by articulating the decisions made, the reasons supporting those decisions, and how it calculated the attorney fee. Horn, 810 So. 2d at 682, citing American Civil Liberties Union of Georgia v. Barnes, 168 F.3d 423, 427 (11th Cir. 1999); see also Hensley, 461 U.S. at 437, 103 S. Ct. 1933.'"

Kiker, 67 So. 3d at 868 (quoting Pharmacia Corp., 915 So. 2d at 553 (Ala. 2004)).

Discussion

I.

Initially we address whether we have jurisdiction to hear Hutchinson's appeal. The dissenting opinion asserts that Hutchinson's exclusive remedy was to file a petition for the writ of mandamus.[2] The dissenting opinion states:

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[2]In its brief to the Alabama Supreme Court in Hutchinson I, the State's first argument was that Hutchinson's exclusive remedy was to file a petition for the writ of mandamus. (State's brief in Hutchinson I, pp. 6-7.) The Supreme Court did not expressly state that it was addressing this argument as put forth by the State, but, as discussed below, we think

"[This appeal] is not an appeal from a 'misdemeanor[], ... habeas corpus[, a] felon[y], [or a] post conviction writ[] in [a] criminal case[].' § 12-3-9, Ala. Code 1975. Thus, I do not believe that the legislature has granted this Court the authority to hear the cause on direct appeal. See Baker v. State, 877 So. 2d 639, 641 (Ala. Crim. App. 2003) (recognizing that § 12-3-9, Ala. Code 1975, establishes the jurisdiction of this Court to hear a direct appeal). However, as Justice Johnstone explained in his special writing in Ex parte Smith, 794 So. 2d 1089, 1093 (Ala. 2001), this Court does have jurisdiction to entertain a petition for a writ of mandamus relating to the circuit court's action on an attorney-fee declaration. As Justice Johnstone aptly stated:

> "'This jurisdiction was conferred by Amendment 328, § 6.03, Alabama Constitution of 1901, [now § 141, Ala. Const. 1901 (Off. Recomp.)], which provides, in pertinent part, that the Court of Criminal Appeals has original jurisdiction "in the issuance and determination of writs of ... mandamus in relation to matters in which said court has appellate jurisdiction." This capital murder case was a "matter[] in which said court has appellate jurisdiction," and the dispute over this circuit court production order at issue was "in relation to" that very matter.'

"Ex parte Smith, 794 So. 2d at 1093. Stated differently, Hutchinson's challenge to the circuit court's reduction of the amount of money he should be paid for his representation of an indigent, criminal defendant relates to the felony prosecution

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the Supreme Court's analysis in Hutchinson I rejects the notion that a mandamus petition is the exclusive means of review available to Hutchinson.

> of his client, but is not an appeal of a 'misdemeanor ... [or] felon[y].' conviction or sentence. § 12-3-9, Ala. Code 1975. Accordingly, Hutchinson should have filed a petition for a writ of mandamus seeking an order from this Court directing the circuit court to approve his attorney-fee declaration in full."

___ So. 3d at ___ (Windom, P.J., dissenting).

In its opinion transferring Hutchinson's appeal to this Court, Hutchinson I, 66 So. 3d 220, the Alabama Supreme Court expressly adopted an extensive portion of Justice Murdock's special writing in State v. Isbell, 985 So. 2d 446 (Ala. 2007). The Supreme Court's adoption of Justice Murdock's special writing in Isbell includes language that addresses the notion that, based on Justice Johnstone's writing in Smith, a petition for the writ of mandamus is the exclusive means for Hutchinson to obtain appellate review of the order in this case. Further, Justice Murdock's writing in Isbell, as adopted by the Supreme Court in Hutchinson I, establishes that § 12-3-9, Ala. Code 1975, confers jurisdiction on this Court to hear Hutchinson's appeal in the present case.

Specifically, after quoting the same paragraph of Justice Johnstone's writing in Smith that is quoted above, Justice Murdock's writing includes a footnote, which the Supreme Court

also quoted and adopted in Hutchinson I. In that footnote, Justice Murdock stated:

> "'As between a mandamus proceeding in the Court of Criminal Appeals and a collateral, declaratory-judgment proceeding in the same circuit court that entered the original fee award, I certainly believe Justice Johnstone was correct in his conclusion that a mandamus proceeding in the Court of Criminal Appeals was the only proceeding that could be considered appropriate. I would go a step further, however, and ask whether the appropriate vehicle for appellate review would be an appeal to the Court of Criminal Appeals, rather than a mandamus proceeding.'"

Hutchinson I, 66 So. 3d at 230 (quoting Smith, 985 So. 2d at 455 n.4 (Murdock, J., concurring in the result) (emphasis added)). Justice Murdock then answered the question by explaining why § 12-3-9, Ala. Code 1975, confers jurisdiction over an appeal of a circuit court's final order on an attorney-fee declaration in a criminal case:

> "'It is well established that an order awarding attorney fees in relation to an underlying case is, itself, an appealable judgment. Niezer v. SouthTrust Bank, 887 So. 2d 919, 923 (Ala. Civ. App. 2004) ("[A]ttorney-fee matters are separate and distinct from matters going to the merits of a dispute and ... an appeal may be taken from a final judgment as to either aspect of a case."); Hunt v. NationsCredit Fin. Servs. Corp., 902 So. 2d 75, 81 (Ala. Civ. App. 2004) (concluding that Niezer stands for the proposition that an "order denying an award of attorney fees that is ancillary to an earlier decision and has completely adjudicated all matters

> in controversy between the parties is immediately appealable" and is consistent with the United States Supreme Court decision in Budinich v. Becton Dickinson & Co., 486 U.S. 196, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)); Sparks v. Parker, 368 So. 2d 528 (Ala. 1979) (reviewing a trial court's order establishing and administering Calhoun County's indigent-defense system by way of an appeal); C.A. Wright et al., Federal Practice and Procedure § 3915.6 (2d ed. 1992); Clark v. Johnson, 278 F.3d 459 (5th Cir. 2002)(holding that an order denying compensation under the federal Criminal Justice Act for services performed before a state clemency board by counsel appointed to represent a state prisoner was final and appealable, despite the fact that the order was separate from the merits of the habeas corpus proceeding). Cf. Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 170, 59 S. Ct. 777, 83 L. Ed. 1184 (1939) (giving certiorari review to an attorney-fee order appealed to the lower appellate court and observing that a petition for an attorney fee in equity is "an independent proceeding supplemental to the original proceeding"). The delegation in § 12-3-9[, Ala. Code 1975,] to the Court of Criminal Appeals of jurisdiction over criminal cases involving misdemeanors and felonies necessarily and logically includes jurisdiction to review any appealable order arising out of or relating to such a case.'"

Hutchinson I, 66 So. 3d at 230 (quoting Smith, 985 So. 2d at 455 n.4 (Murdock, J., concurring in the result) (emphasis added)). Thus, based on the Alabama Supreme Court's decision in Hutchinson I, we conclude that we have jurisdiction to hear Hutchinson's appeal in this case.

II.

In our opinion in Hutchinson II, we included the following summary of the fee declarations in this case and the trial court's reduction of the amounts Hutchinson requested in those declarations:

> "Hutchinson submitted two fee declarations to the trial court: The first was for work Hutchinson performed in the trial court before the appeal to this Court, and the second was for work completed after Banks filed his appeal. Each fee declaration included detailed itemizations of the amounts Hutchinson claimed.
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> "Hutchinson's first fee declaration sought the following amounts:
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> "-- $1,635 in in-court expenses, representing 27.25 hours at $60 an hour;
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> "-- $18,557.60 in out-of-court expenses, representing 463.94 hours at $40 an hour;
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> "-- $3,803.95 in extraordinary expenses approved in advance by the trial court; and
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> "-- $17,191.65 in overhead expenses, representing 491.19 hours at $35 an hour.
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> "The second fee declaration sought the following amounts:
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> "-- $2,610 in in-court expenses, representing 43.50 hours at $60 an hour;
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> "-- $28,046 in out-of-court expenses, representing 701.15 hours at $40 an hour; extraordinary expenses approved in advance by the court of $5,143.15; and overhead

> expenses of $26,062.75, representing 744.65 hours at $35 an hour.

"Because the judge who had presided over Banks's criminal proceedings had retired, the fee declarations were assigned to a new judge. An evidentiary hearing was held on March 9, 2009. Hutchinson testified at the hearing, as did attorney Jim Evans, who served as appointed cocounsel with Hutchinson during Banks's proceedings, and attorney Spencer Walker, who had served as appointed counsel for Banks's wife Victoria.

"On September 2, 2009, the trial court entered separate orders on the fee declarations. On each fee declaration, the trial court approved Hutchinson's litigation expenses and the amounts Hutchinson sought for in-court time. On both fee declarations, however, the trial court reduced the amounts Hutchinson sought for out-of-court time and for office overhead expenses.

"In the first fee declaration, Hutchinson sought $18,557.60 for out-of-court work (463.94 hours at the rate of $40 per hour) and overhead expenses of $17,191.65 (491.19 hours at the rate of $35 per hour). The trial court reduced the fee for out-of-court work to $11,597.46 and the overhead expenses to $8,595.82. The trial court gave no explanation for the reductions, other than a handwritten note on the fee declaration stating that the reduced amounts represented '39.75% of out of ct. hours.' The trial court did not explain, however, why it selected 39.75 as a percentage to reduce the out-of-court hourly fee and the overhead expenses. Moreover, it does not appear that the trial court actually reduced either of those expenses by 39.75 percent.

"In the second fee declaration, Hutchinson sought $28,046 for out-of-court hourly work (701.15 hours at the rate of $40 per hour) and $26,062.75 in overhead expenses (744.65 hours at the rate of $35

> per hour). The trial court reduced the fee for out-of-court work to $17,578.54 and the overhead expenses to $13,031.37. Again, the trial court gave no reason for the reductions other than a handwritten note on the fee declaration stating that the reduced amounts represented '60.25% of out of ct. hours.' As with the first fee declaration, the trial court did not explain why it selected 60.25 percent, nor does it appear that the trial court actually used 60.25 percent in reducing the amounts claimed by Hutchinson."

Hutchinson II, ___ So. 3d at ___.

As noted above, in his order on return to remand, Judge Scurlock provided three reasons for his reduction of the fee-declaration amounts. We discuss each of those reasons in turn, and we hold that Judge Scurlock exceeded his discretion in reducing the fee-declaration amounts.

First, Judge Scurlock stated that Hutchinson submitted his fee declarations in an untimely manner, thereby preventing the judge who had originally presided over the case from ruling on the fee declarations. According to Judge Scurlock, Hutchinson waited to submit his fee declarations until almost six years after the conclusion of Banks's case.[3]

[3]In contrast, the case-action summary indicates that Hutchinson's cocounsel submitted his fee declaration less than a month after the conclusion of Banks's case.

Section 15-12-21(e), Ala. Code 1975, requires that a fee declaration be submitted within a "reasonable time" after the conclusion of the matter. There is nothing in the materials before us to indicate why Hutchinson waited almost six years to submit his fee declarations. We note, however, that Judge Scurlock conducted a full evidentiary hearing on Hutchinson's fee declarations; at that hearing, there was no question regarding the timeliness of the filing of the declarations. Consequently, we are not persuaded that Hutchinson's delay in submitting the fee declarations necessarily justified a reduction to those fee declarations.

The second reason cited by Judge Scurlock were ethical violations allegedly committed by Hutchinson. Two specific alleged violations were cited. As to the first allegation--that Hutchinson instructed his wife to mail, at the county's expense, requests for funds for Banks's defense--nothing in the record before us supports this allegation.

The second alleged ethical violation--that "Hutchinson took a medical report[4] to Judge McPhearson's house, and

[4]As discussed in this Court's opinion in Banks v. State, 845 So. 2d 9 (Ala. Crim. App. 2002), Hutchinson obtained test results that demonstrated that Banks's wife, Victoria, was

engaged in an ex parte conversation with him, during the pendency of the Banks case, without the knowledge of the State"--was addressed briefly at the evidentiary hearing on the fee declarations. In response to questioning from Judge Scurlock about the ex parte communication, Hutchinson first testified that he took the results and showed them to Judge McPhearson; Hutchinson then attempted to "clarify" his response and stated that he "told [Judge McPhearson] that there was a test result from Birmingham, and we wanted a hearing as soon as possible." (R. 50-51.) Although we do not condone Hutchinson's conduct, the Alabama State Bar and ultimately the Alabama Supreme Court--not the Choctaw Circuit Court in an action to recover an indigent-defense attorney fee--are charged with determining whether an attorney has committed an ethical violation and, if so, the appropriate sanction to impose. The materials before us do not indicate that Hutchinson was charged with or convicted of an ethical violation with regard to the incident cited by Judge Scurlock.

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incapable of being pregnant at the time that Victoria was allegedly pregnant with the child Banks was accused of killing. See Banks, 845 So. 2d at 14-17. The medical report to which Judge Scurlock referred in his order is the report that included those test results.

Accordingly, this alleged ethical violation was not an appropriate basis upon which to reduce Hutchinson's fee declaration.

The third reason Judge Scurlock cited in his order explaining the reduction in fees was that he found that Hutchinson's testimony regarding the number of hours he worked was "not credible" and the number of hours claimed for out-of-court work was unreasonable. In support of this conclusion, Judge Scurlock stated that "Hutchinson has a history, reaching back over twenty years, of being consistently far higher in his billing for appointed work than any other attorney in Choctaw County." We note that one of the factors for determining the reasonableness of an attorney fee is "the professional experience and reputation of the attorney." Kiker, 67 So. 3d at 867. In this case, however, there is nothing in the materials before us to support Judge Scurlock's assertion. Moreover, Hutchinson presented extensive documentation, including numerous itemizations, in support of his fee declarations. Additionally, at the evidentiary hearing on the fee declarations, two attorneys testified that Hutchinson's fee declarations were reasonable. Nothing in the

record before us contradicts or calls into question the evidence Hutchinson offered in support of his fee declarations. Consequently, there was no evidentiary basis upon which Judge Scurlock could have reduced Hutchinson's fee declarations because of Hutchinson's alleged reputation for billing too much in indigent-defense cases.

Finally, Judge Scurlock stated the following as to the formula he used for reducing Hutchinson's fee: "I considered the factors set out above and based my decision on the hours claimed by co-counsel, Mr. Evans. I then increased the amounts in consideration of Mr. Hutchinson having been the lead attorney." In our opinion remanding this case, we noted that Judge Scurlock had not explained why he selected the percentages he claimed to have used in reducing Hutchinson's fee declarations and that it did not appear that he actually used those percentages in reducing the amounts claimed by Hutchinson. Unfortunately, the order returned to us on remand does not provide a sufficient explanation for the percentage Judge Scurlock formulated, nor does it address why that percentage was not actually used in reducing the amounts claimed by Hutchinson.

There is no evidence in the record to support the circuit court's reduction of the amounts Hutchinson requested, and the reduction of those amounts was arbitrary. Indeed, the uncontradicted evidence before the circuit court supported the amounts Hutchinson requested. Accordingly, the circuit court exceeded its discretion in not granting Hutchinson's request for attorney fees in Banks's case. Love v. Hall, 940 So. 2d 297, 299 (Ala. Civ. App. 2006) ("[A] trial court's judgment awarding an attorney fee based on ore tenus evidence is to be presumed correct, and ... that court's findings will not be disturbed on appeal unless they are palpably wrong, manifestly unjust, or without supporting evidence, see Anderson v. Lee, 621 So. 2d 1305, 1307 (Ala. 1993)." (Emphasis added.)).

The judgment of the circuit court reducing the amounts claimed by Hutchinson is reversed, and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Welch, Kellum, and Burke, JJ., concur. Windom, P.J., dissents, with opinion.

WINDOM, Presiding Judge, dissenting.

Joseph W. Hutchinson III's challenge to the circuit court's decision to approve only a part of his attorney-fee declaration for his representation of an indigent, criminal defendant is not an appeal from a "misdemeanor[], ... habeas corpus[, a] felon[y], [or a] post conviction writ[] in [a] criminal case[]." § 12-3-9, Ala. Code 1975. Thus, I do not believe that the legislature has granted this Court the authority to hear the cause on direct appeal. See Baker v. State, 877 So. 2d 639, 641 (Ala. Crim. App. 2003) (recognizing that § 12-3-9, Ala. Code 1975, establishes the jurisdiction of this Court to hear a direct appeal). However, as Justice Johnstone explained in his special writing in Ex parte Smith, 794 So. 2d 1089, 1093 (Ala. 2001), this Court does have jurisdiction to entertain a petition for a writ of mandamus relating to the circuit court's action on an attorney-fee declaration. As Justice Johnstone aptly stated:

> "This jurisdiction was conferred by Amendment 328, § 6.03, Alabama Constitution of 1901, [now § 141, Ala. Const. 1901 (Off. Recomp.)], which provides, in pertinent part, that the Court of Criminal Appeals has original jurisdiction 'in the issuance and determination of writs of ... mandamus in relation to matters in which said court has appellate jurisdiction.' This capital murder case

> was a 'matter[] in which said court has appellate jurisdiction,' and the dispute over this circuit court production order at issue was 'in relation to' that very matter."

Ex parte Smith, 794 So. 2d at 1093. Stated differently, Hutchinson's challenge to the circuit court's reduction of the amount of money he should be paid for his representation of an indigent, criminal defendant relates to the felony prosecution of his client, but is not an appeal of a "misdemeanor ... [or] felon[y]" conviction or sentence. § 12-3-9, Ala. Code 1975. Accordingly, Hutchinson should have filed a petition for a writ of mandamus seeking an order from this Court directing the circuit court to approve his attorney-fee declaration in full.

The Alabama Supreme Court's holding transferring this cause to this Court supports my belief that Hutchinson should have petitioned this Court for a writ of mandamus. In transferring this cause, the Alabama Supreme Court made it clear that "[a]warding attorney fees 'in relation to' a criminal case is a matter for the Court of Criminal Appeals." Hutchinson v. State, 66 So. 3d 220, 231 (Ala. 2010) (quoting Art. VI, § 141, Ala. Const. 1901 (Off. Recomp.) (previously Amendment No. 328, § 6.03, Ala. Const. 1901) (the provision of

the Alabama Constitution granting this Court the authority to issue writs of mandamus). By stating that the circuit court's approval of attorney fees is "in relation to" a criminal case and quoting the constitutional provision granting this Court the authority to issue writs of mandamus, the Alabama Supreme Court implicitly recognized that this type of action should be heard by way of a petition for writ of mandamus as opposed to an appeal.[5] Id. Cf. Ex parte Kandola, 77 So. 3d 1209, 1211 (Ala. Crim. App. 2011) ("Generally, a petition for a writ of mandamus may not be used as a substitute for an appeal.") (citations omitted); Ex parte Donaldson, 80 So. 3d 895, 897 (Ala. 2011) (reiterating that a writ of mandamus is a drastic and extraordinary writ that will be issued only when there is, among other things, a lack of another adequate remedy).

Hutchinson, however, did not petition this Court for a writ of mandamus. Instead, he sought relief by way of an

[5]Although in Hutchinson v. State, 66 So. 3d 220, 230 (Ala. 2010), the Alabama Supreme Court quoted two footnotes from Justice Murdock's special writing in State v. Isbell, 985 So. 2d 446 (Ala. 2007), in which he questioned whether a challenge to the circuit court's action on an attorney-fee declaration may be raised on direct appeal, the Supreme Court transferred this cause to this Court pursuant to this Court's authority to issue writs of mandamus. Hutchinson, 66 So. 3d at 231.

appeal. Accordingly, I believe that this Court should either deny relief because he utilized the wrong procedure or treat his brief as a mandamus petition. In either event, I do not believe that Hutchinson is entitled to relief.

If this Court were to treat Hutchinson's brief as a petition for writ of mandamus, he is not entitled to any relief. In Ex parte Stewart, 74 So. 3d 944, 947 (Ala. 2011), the Alabama Supreme Court reiterated:

> "A writ of mandamus is an extraordinary remedy, and is appropriate when the petitioner can show (1) a clear legal right 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) the properly invoked jurisdiction of the court."

(Citations and quotations omitted.) Here, Hutchinson has not satisfied each of the requirements for the issuance of a petition for writ of mandamus. Specifically, he has not shown that he has a clear legal right, that the circuit court had an imperative duty to act, or that he has properly invoked the jurisdiction of this Court.

As discussed above, Hutchinson has not invoked this Court's authority to issue a writ of mandamus. Instead, he sought relief through an appeal. Further, he has not

established a clear legal right to full approval of, or an imperative duty upon the circuit court to approve fully, his attorney-fee declaration. When Hutchinson represented his client in this case, § 15-12-21(e), Ala. Code 1975, required Hutchinson to submit an attorney-fee declaration for his representation of the indigent defendant within a reasonable time. Hutchinson, however, waited almost six years to submit his attorney-fee declaration in which he sought over $100,000. As a result of Hutchinson's unreasonable delay in submitting his attorney-fee declaration, the judge who presided over the proceedings for which he sought payment was unavailable to review his fee request. Because Hutchinson failed to submit his attorney-fee declaration within a reasonable time as required under § 15-12-21(e), Ala. Code 1975, I do not believe that he can establish a clear legal right to the relief sought or an imperative duty upon the circuit court to act.

More importantly, Hutchinson has not shown that the circuit court lacked the authority to approve only a portion of his attorney-fee declaration. As the majority correctly states, "[t]he determination of whether an attorney fee is reasonable is within the sound discretion of the trial court

and its determination on such an issue will not be disturbed on appeal unless in awarding the fee the trial court exceeded that discretion." ___ So. 3d at ___ (citations and quotations omitted). Thus, the circuit court has the authority to approve only the portion of an attorney-fee declaration that the court finds to be reasonable. In Ex parte King, 23 So. 3d 77 (Ala. 2009), the Alabama Supreme Court held that "'[m]andamus is appropriate [only] in exceptional circumstances which amount to judicial usurpation of power [and] can be used to prevent a gross disruption in the administration of criminal justice.'" 23 So. 3d at 79 (quoting Ex parte Nice, 407 So. 2d 874, 878-79 (Ala. 1981)). The Court in King went on to explain that a petition for a writ of mandamus will not provide an avenue for relief when the action of the circuit court was within that court's authority and did not amount to a gross disruption in the administration of criminal justice. King, 23 So. 3d at 79. Thus, "'circumstances involving alleged errors of judgment, or errors in the exercise of judicial discretion, [do] not constitute grounds for invoking supervisory mandamus.'" Id. (quoting Nice, 407 So. 2d at 882).

Here, Hutchinson merely raises an alleged error in the circuit court's exercise of its discretion in approving his attorney-fee declaration; therefore, his allegation of error "[does] not constitute [a] ground[] for invoking supervisory mandamus.'" King, 23 So. 3d at 79 (quoting Nice, 407 So. 2d at 882). Therefore, I do not believe that Hutchinson is entitled to any relief.

For the foregoing reasons, I disagree with the majority's decision to reverse the circuit court's judgment approving only a part of Hutchinson's attorney-fee declaration. Therefore, I respectfully dissent.