



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-82,265-01 & WR-82,265-02

IN RE TYRONE ALLEN, Relator

ON PETITIONS FOR WRITS OF MANDAMUS
TO THE FIFTH COURT OF APPEALS
CAUSE NOS. 05-14-01167-CV AND 05-14-01168-CV
FROM DALLAS COUNTY

MEYERS, J., filed a concurring opinion.

CONCURRING OPINION

I agree with the majority's analysis of the mandamus issue in this case. I write separately to address the dissenting opinions. Judge Alcalá's position on mootness is incorrect. Her solution would be similar to saying that if a judge made a pretrial ruling on a suppression hearing and there was a new judge at the trial, then the ruling in the pretrial hearing would be moot. This is simply not the case. A new judge at trial does not render moot the ruling made by another judge in a pretrial hearing.

Additionally, while I agree with Judge Newell that this is a punishment issue, it is no different than conducting a pretrial determination of whether the defendant was a juvenile at the time of the offense or whether the victim of the offense was below the age of six. Both of these are sentencing issues that would determine whether a defendant would be eligible for the death penalty, and both are properly conducted prior to the beginning of the trial.

With the foregoing comments, I join the majority.

Filed: May 13, 2015

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