REL: September 20, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-18-0536

Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama

v.

Jarod Chase Cantrell)

(Winston Circuit Court, CC-17-155)

PER CURIAM.

The State of Alabama filed this petition for a writ of mandamus requesting this Court to direct Judge Talmage Lee Carter to set aside that portion of his order of February 27, 2019, dismissing with prejudice the indictment against Jarod

Chase Cantrell. We dismiss the State's petition.

On May 23, 2017, the Winston County grand jury returned a 12-count indictment against Cantrell. Cantrell faced three counts of second-degree rape, see § 13A-6-62, Ala. Code 1975, three counts of second-degree sodomy, see § 13A-6-64, three counts of being a school employee who engaged in a sex act with a student under the age of 19 years, see § 13A-6-81, Ala. Code 1975, and three counts of third-degree burglary, see § 13A-7-7, Ala. Code 1975. Cantrell's charges arose from allegations that he, a teacher, had engaged in sexual acts with K.E.B., a 15-year-old student.

On February 18, 2019, Judge Carter granted two of Cantrell's pretrial motions that are relevant to the State's petition. First, Judge Carter granted Cantrell's motion in limine asking the trial court to restrict the State's witnesses from using the words "rape" and "sodomy." Second, Judge Carter granted Cantrell's motion to suppress a statement he had given to Double Springs Chief of Police Kim Miller on February 27, 2017, following his arrest.[1] Judge Carter made

[1]The materials before us do not indicate that the State filed a pretrial appeal challenging these rulings. See Rule 15.7, Ala. R. Crim. P.

the following findings in support of his judgment:

> "[Cantrell] gave a statement to the Double Springs Police Department on February 27, 2017, during a custodial interrogation. Prior to the start of the interview, the interrogating officer read [Cantrell] his Miranda [v. Arizona, 684 U.S. 436 (1966),] warnings and then instructed [Cantrell], 'I need you to sign there, that I read that to you.' After signing the Miranda form, [Cantrell] stated, 'Yeah, I just want you to explain those to me; that's all I want you to do.' The interrogating officer responded, 'Okay.'[2] The recording was stopped and resumed when the interview started.
>
> "No evidence was presented that the interrogating officer explained the Miranda rights to [Cantrell] after [Cantrell] requested an explanation or that other steps were taken to insure that the waiver was knowing and intelligent. The State has not proven that a valid waiver of the right to silence and the right to counsel occurred in this case."

(State's petition, Exhibit F.)

Cantrell's trial began the next day. Officer Tim Hale of the Double Springs Police Department testified during the State's case-in-chief. On direct examination, Officer Hale was asked how he had become involved in the case. Officer Hale responded: "[Chief Miller] called and stated that I

[2]Chief Miller testified at the suppression hearing that he had construed Cantrell's request as asking that the charges be explained. (State's petition, Exhibit D at 13.)

needed to get out to [Ca.B.] and [Ch.B.]'s house, that their daughter had been raped." (State's petition, Exhibit H.) Defense counsel objected and asked for a curative instruction. The prosecutor, who expressed surprise at Officer Hale's testimony, stated that he had informed the victim and her parents about the court's prohibition but had failed to discuss the issue with other witnesses. The prosecutor suggested that Officer Hale's offending statement be stricken. Judge Carter struck the answer from the record and issued a lengthy curative instruction to the jury.

The trial progressed, and the State completed its case-in-chief. Cantrell elected to testify in his own defense. During the direct examination of Cantrell, defense counsel asked Cantrell if he had ever climbed through the victim's window. (State's petition, Exhibit I at 41.) Cantrell denied having done so. (State's petition, Exhibit I at 41.) This testimony, however, conflicted with a statement Cantrell had made to Chief Miller following his arrest. During the State's cross-examination, the prosecutor attempted to impeach Cantrell based on his conflicting statements:

> "Q. ... [Defense counsel] asked you, did you climb through her window?

"A. Correct.

"Q. And that's talking about the window of [K.E.B.]?

"Q. Yes.

"A. And your answer here today under oath is --

"Q. I have never climbed through her window, no.

"....

"Q. Do you recall previously having stated that you did go into her house through the window?"

(State's petition, Exhibit I at 63-64.) Defense counsel objected to the question and moved for a mistrial. The prosecutor argued that, pursuant to the holding of the Supreme Court of the United States in Harris v. New York, 401 U.S. 222 (1971), "voluntary statements taken in violation of Fifth Amendment prophylactic rules, while inadmissible in the prosecution's case in chief, may nevertheless be used to impeach the defendant's conflicting testimony." Michigan v. Harvey, 494 U.S. 344, 344 (1990). The State's argument was abruptly ended by Judge Carter, who stated, "Okay. All right. I've heard all I need to hear. We're going to take a recess. I want to see the attorneys in chambers." (States's petition, Exhibit I at 68-69.) When trial resumed, Judge Carter stated: "Okay. I've considered the defense motion for mistrial.

Based on prosecutorial misconduct, I'm granting the motion." (States's petition, Exhibit I at 69.)

On February 22, 2019, Judge Carter issued the following bench order: "February 21, 2019: This day came the District Attorney and the Defendant with counsel, ..., and the trial resumed and concluded; Defense Motion for Mistrial granted." (State's petition, Exhibit K.) On February 27, 2019, Judge Carter amended his order to state: "February 21, 2019: This day came the District Attorney and the Defendant with counsel, ..., and the trial resumed and concluded; Defense Motion for Mistrial granted due to prosecutorial misconduct. ... This case is dismissed with prejudice." (State's petition, Exhibit L.) The State timely filed the instant petition asserting that Judge Carter lacked authority to dismiss the indictment against Cantrell with prejudice. This Court offered the respondents an opportunity to answer the allegations in the State's petition. Cantrell filed an answer, and this Court has considered his response.

In its petition, the State asserts that Judge Carter lacked the authority to sua sponte dismiss with prejudice the

indictment against Cantrell.[3] By dismissing the indictment against Cantrell with prejudice, Judge Carter's order purports to bar the Winston County District Attorney from re-indicting Cantrell on the 12 charges contained in the indictment. Cf. Black's Law Dictionary 570 (10th ed. 2014) (noting that the dismissal of a case with prejudice "remove[s] [the case] from the court's docket in such a way that the plaintiff is foreclosed from filing a suit again on the same claim or claims").

Initially, this Court must address whether there is any relief that can be granted. Cantrell's answer asserts, in part, that the issue before this Court is now moot because no stay has been granted in this case.

The Alabama Supreme Court has held that "[t]he filing of a petition for a writ of mandamus against a trial judge does not divest the trial court of jurisdiction, stay the case, or toll the running of any period for obeying an order or

[3]In his answer to the State's petition, Cantrell characterizes Judge Carter's dismissal as a granting of his motion for a judgment of acquittal. This Court finds no support for that assertion. Also, Cantrell argues that the circuit court acted appropriately in granting his motion for a mistrial. The propriety of that ruling, however, is not before this Court.

perfecting a filing in the case." State v. Webber, 892 So. 2d 869, 871 (Ala. 2004) (citing Ex parte St. John, 805 So. 2d 684 (Ala. 2001); State ex rel. S.N. v. W.Y., 622 So. 2d 378, 381 (Ala. Civ. App. 1993); and Continental Oil Co. v. Williams, 370 So. 2d 953, 954 (Ala. 1979)). Instead, "[t]he petition for a writ of mandamus, if meritorious, merely prompts the appellate court to exercise its supervisory power to tell the trial judge, as an official, as distinguished from the trial court itself, to do his or her duty when that duty is so clear that there are no two ways about it." Webber, 892 So. 2d at 871 (citing Ex parte Little, 837 So. 2d 822, 824 (Ala. 2002)). Thus, in the absence of a stay, a trial court loses jurisdiction to modify or vacate its order after 30 days, and the issue before the appellate court becomes moot. Webber, 892 So. 2d at 870-71. See also Ex parte Denson, 57 So. 3d 195, 198 (Ala. 2010) ("Because the case was not stayed, the trial court at the expiration of the 30 days from the entry of the judgment of acquittal for Neel lost subject-matter jurisdiction of Neel's case, and the Court of Criminal Appeals lost all possibility of acquiring appellate jurisdiction to remand the case for the trial court's judgment to be

vacated.").

In the circuit court, the State moved for a stay, but that motion was denied. (State's petition, Exhibit N.) Contemporaneous with the filing in this Court of its petition for writ of mandamus, the State filed a motion to stay. This Court, however, did not rule on the motion for a stay; consequently, the circuit court no longer has jurisdiction over Cantrell's case. Because the circuit court no longer has jurisdiction over Cantrell's case, this Court has "lost all possibility of acquiring appellate jurisdiction to remand the case for the trial court's judgment to be vacated." Ex parte Denson, 57 So. 3d at 198. Accordingly, the State's petition is due to be dismissed. Id.

In dismissing this petition, we note that "'the denial [of a petition for a writ of mandamus] does not operate as a binding decision on the merits'" and "'does not have res judicata effect.'" Ex parte Shelton, 814 So. 2d 251, 255 (Ala. 2001) (citations omitted).

PETITION DISMISSED.

Cole, J., concurs. Minor, J., concurs specially, with opinion, joined by McCool, J. Windom, P.J., and Kellum, J., dissent, with opinions.

MINOR, Judge, concurring specially.

I concur in the Court's decision. Under Ex parte Denson, 57 So. 3d 195 (Ala. 2010), this Court does not have jurisdiction over this petition. This jurisdictional limitation ends our inquiry regardless of whether the trial court erred.

I am sympathetic to the positions of Presiding Judge Windom and Judge Kellum that the "with prejudice" portion of the circuit court's judgment dismissing the indictment against Jarod Chase Cantrell violates the separation-of-powers doctrine. Indeed, two dissenting justices in State v. Webber, 892 So. 2d 869 (Ala. 2004), took a similar position in that case. Webber, 892 So. 2d at 874 (Stuart, J., dissenting) ("The trial court in this situation usurped the authority of the State and invaded the province of the executive branch."). But that position did not prevail in Webber, and I see no reason to think it would do so now.

As the main opinion notes, our dismissal of this petition is not "'"a binding decision on the merits"' and '"does not have res judicata effect."'" ___ So. 3d ___, ___ (quoting Ex parte Shelton, 814 So. 2d 251, 255 (Ala. 2001) (additional

citations omitted)). Thus, our dismissal of the petition should not be construed as holding that the "with prejudice" portion of the circuit court's dismissal order indeed prohibits the State from re-indicting Cantrell.

McCool, J., concurs.

WINDOM, Presiding Judge, dissenting.

The majority, relying on State v. Webber, 892 So. 2d 869, 871 (Ala. 2004), holds that the issue before this Court has been rendered moot because no stay has been granted in this case. Yet, this Court has held that "neither the circuit court nor this Court can stay a void judgment." State v. Utley, 94 So. 3d 414, 416 (Ala. Crim. App. 2012). Because I believe that Judge Carter's action -- sua sponte dismissing the indictment with prejudice -- was void, the State's failure to obtain a stay of the proceedings should not be fatal to its petition. See Utley, 94 So. 3d at 416 ("'[The] order of [the] trial court is void because that court lacked jurisdiction to issue that order, and the filing of a motion to stay is unnecessary.'" (quoting Ex parte Tiongson, 765 So. 2d 643, 643 (Ala. 2000))).

The State asserts in its petition that Judge Talmage Lee Carter lacked authority to sua sponte dismiss with prejudice the indictment against Cantrell. The dismissal of a case with prejudice "remove[s] [the case] from the court's docket in such a way that the plaintiff is foreclosed from filing a suit again on the same claim or claims." Black's Law Dictionary

570 (10th ed. 2014). In other words, Judge Carter's order purports to bar the Winston County District Attorney from re-indicting Cantrell on the 12 charges contained in the indictment.

The Alabama Constitution created three, co-equal branches of government -- the legislative, executive, and judicial. Art. III, § 42(b), Constitution of Alabama 1901. The Constitution dictates that "each of the three separate coequal branches confine its activities to its respective sphere." Ex parte Cranman, 792 So. 2d 392, 399 (Ala. 2000). With respect to the judicial branch, Art. III, § 42(c), Constitution of Alabama 1901, declares: "To the end that the government of the State of Alabama may be a government of laws and not of individuals, and except as expressly directed or permitted in this constitution, ... the judicial branch may not exercise the legislative or executive power." (Emphasis added.)

Circuit courts, which are, of course, part of the judicial branch, derive their power from the Alabama Constitution and the Alabama Code. Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006) (citing United States v. Cotton, 535 U.S. 625, 630-31 (2002)). Article VI, § 142(b), Constitution

of Alabama, states:

> "The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law. The circuit court may be authorized by law to review decisions of state administrative agencies and decisions of inferior courts. It shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers, and shall have such other powers as may be provided by law."

With respect to criminal matters, The Alabama Code vests in the circuit court "exclusive original jurisdiction of all felony prosecutions and of misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same incident as a felony charge," as well as "other powers provided by law." § 12-11-30, Ala. Code 1975.

Although district attorneys are enumerated in Article VI, which provides for the judicial department, when "exposing and prosecuting crimes, district attorneys are members of the executive branch of state government." Piggly Wiggly No. 208, Inc. v. Dutton, 601 So. 2d 907, 910 (Ala. 1992) (citing Dickerson v. State, 414 So. 2d 998, 1008 (Ala. Crim. App. 1982)). In Dickerson, 414 So. 2d at 1008, abrogated on other grounds by Ex parte Bohannon, 564 So. 2d 854 (Ala. 1988), this

Court stated:

> "The district attorney is a public officer representing the sovereign power of the people and has been defined as 'the foremost representative of the executive branch of government in the enforcement of the criminal law in his county.' 27 C.J.S. District and Prosecuting Attorneys § 1(a) (1959). He is only an officer of the court to the extent that all attorneys are officers of the court. People v. Rodriguez, 13 Misc. 2d 1004, 178 N.Y.S.2d 993 (1958), cert. denied, 362 U.S. 984, 80 S. Ct. 959, 4 L. Ed. 2d 1009 (1960).
>
> "Amendment 328 does not give the judicial branch any power, authority, or control over the office of district attorney. No rule of judicial administration governs the office. Even the powers and duties of the district attorney make no reference to control and regulation by the judicial branch. Section 12-17-184, Code of Alabama 1975.
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> "It is the obligation of the attorney general and the district attorney to expose and prosecute crimes. In re White, 53 Ala. App. 377, 300 So. 2d 420, cert. denied, 293 Ala. 778, 300 So. 2d 439 (1974). Such is not the primary function of the judicial branch of government."

There are an array of circumstances in which a circuit court could dismiss a criminal case that would be, in effect, a dismissal with prejudice. For instance, a circuit court may dismiss an indictment for a violation of a defendant's right to a speedy trial, as a sanction for the State's violating Brady v. Maryland, 373 U.S. 83 (1963), or to protect against a violation of a defendant's double-jeopardy rights.

Additionally, Rule 11.6(c), Ala. R. Crim. P., grants a circuit court the authority to dismiss an indictment with prejudice in limited circumstances in cases involving a defendant's competency to stand trial. However, I am unaware of any authority, constitutional or legislative, that would allow Judge Carter to sua sponte dismiss with prejudice the indictment against Cantrell under the circumstances involved here. See Gibson v. Commonwealth, 291 S.W.3d 686, 690 (Ky. 2009) ("Concomitantly, subject to rare exceptions usually related to a defendant's claim of a denial of the right to a speedy trial, the trial judge has no authority, absent consent of the Commonwealth's attorney, to dismiss, amend, or file away before trial a prosecution based on a good indictment." (quoting Hoskins v. Maricle, 150 S.W.3d 1, 13 (Ky. 2004))); State v. Gonzales, 26 S.W.3d 919, 920 (Tex. Ct. App. 2000) ("In the absence of specific authority, a trial court cannot dismiss a prosecution except on the motion of the prosecuting attorney."). Such a practice constitutes a "'gross disruption in the administration of criminal justice.'" Ex parte Nice, 407 So. 2d 874, 880 (Ala. 1981) (quoting United States v. Dooling, 406 F.2d 192 (2d Cir. 1969)).

A circuit court is, by constitutional provision, a court of general jurisdiction; still, its authority to act is not unbridled. I believe Judge Carter's action in this case impermissibly interfered with the State's right to prosecute, and the Alabama Constitution expressly forbids the judicial branch from exercising executive power. Art. III, § 42(c), Constitution of Alabama 1901. Therefore, I believe that portion of Judge Carter's order purporting to dismiss the indictment against Cantrell with prejudice is void. See Gibson, supra, State v. Roberts, 932 S.W.2d 700, 704 (Tex. Ct. App. 1996) ("We hold that the portion of the April 10, 1995 dismissal order which sought to restrain the State from any further prosecution of the charge against Roberts (the 'with prejudice' language) was void."), State v. Williams, 407 S.W.3d 691, 693 (Mo. Ct. App. 2013) ("While the proposition that the trial court has the authority to dismiss a case without prejudice is true in certain circumstances, the trial court does not have the authority to dismiss a case with prejudice absent a speedy trial violation." (Emphasis in original)).

To satisfy the prerequisites for the issuance of a writ

of mandamus, the petitioner must establish: (1) a clear legal right to the relief sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) no adequate remedy at law; and (4) the properly invoked jurisdiction of the reviewing court. See State v. Williams, 679 So. 2d 275, 276 (Ala. Crim. App. 1996).

I believe that the State has satisfied its burden. Accordingly, I believe that this petition for a writ of mandamus is due to be granted and that Judge Carter should be directed to set aside that portion of his order purporting to dismiss the indictment against Cantrell with prejudice. Therefore, I respectfully dissent.

KELLUM, Judge, dissenting.

Because I would issue a writ of prohibition and direct Judge Talmage Lee Carter to set aside that portion of his February 27, 2019, order dismissing the indictment against Cantrell with prejudice, I dissent.

It is my opinion that the circuit court exceeded the scope of its jurisdiction by sua sponte dismissing with prejudice the 12-count indictment against Cantrell. See Piggly Wiggly No. 208, Inc. v. Dutton, 601 So. 2d 907 (Ala. 1992). In Dickerson v. State, 414 So. 2d 998 (Ala. Crim. App. 1982), abrogated on other ground by Ex parte Bohannon, 564 So. 2d 854 (Ala. 1988), we stated:

> "Amendment 328 does not give the judicial branch any power, authority, or control over the office of district attorney. No rule of judicial administration governs the office. Even the powers and duties of the district attorney make no reference to control and regulation by the judicial branch. Section 12-17-184, Code of Alabama 1975."

414 So. 2d at 1008.

I write specifically to address several procedural issues presented by the unique facts in this case.

Initially, this case is correctly before this Court by way of an extraordinary petition. The State has only a

limited right to appeal certain pretrial rulings. See Rule 15.7, Ala. R. Crim. P. However, once jeopardy has attached the State's only remedy is to file an extraordinary petition in the proper appellate court according to Rule 21, Ala. R. App. P. See State v. Turner, 976 So. 2d 508 (Ala. Crim. App. 2007). Certainly, jeopardy had attached in this case; thus, this petition was the only means available for the State to obtain appellate review.

Second, this petition was timely filed. The State has seven days from the date of the issuance of a ruling to file an extraordinary petition attacking that ruling. See Ex parte Thomas, 828 So. 2d 952, 954 (Ala. 2001). Here, Judge Carter dismissed Cantrell's 12-count indictment with prejudice on February 27, 2019. That ruling was a final ruling disposing of all charges against Cantrell. The State filed a motion to reconsider this ruling on February 28, 2019.[4] Judge Carter denied that motion on March 1, 2019. The State had seven days

[4]Typically, a motion to reconsider does not toll the time for filing an extraordinary petition under Rule 21, Ala. R. App. P., because the rulings being attacked are interlocutory. However, in this case Judge Carter's ruling was a final ruling that disposed of all the charges against Cantrell. Therefore, the State's motion to reconsider operated to toll the time for filing an extraordinary petition attacking that ruling. See Ex parte Troutman Sanders, L.L.P., 866 So. 2d 547 (Ala. 2003).

from March 1, 2019, to file a timely petition attacking that ruling. The State filed this petition on March 7, 2019.

Third, because Judge Carter exceeded the scope of his jurisdiction by usurping the exclusive power granted to the Winston County District Attorney, I believe that this Court should treat this extraordinary petition as a petition for a writ of prohibition.[5] In discussing such writs, this Court in Ex parte Alabama Board of Pardons and Paroles, 849 So. 2d 255 (Ala. Crim. App. 2002), explained:

> "A petition for a writ of mandamus is appropriate when a lower court has failed to act. See Ex parte Jackson, 780 So. 2d 681 (Ala. 2000). A petition for a writ of prohibition is appropriate '"when a court acts in excess of its jurisdiction; Ex parte City of Tuskegee, 447 So. 2d 713, 716 (Ala. 1984), and because it is "the proper remedy to intercept and put an end to a usurpation of jurisdiction."' Ex parte Coffee County Dep't of Human Res., 771 So. 2d 485, 487 (Ala. Civ. App. 2000), quoting, Ex parte State ex rel. Bragg, 240 Ala. 80, 85, 197 So. 32, 36 (1940). As the Alabama Supreme Court stated in Ex parte Maye, 799 So. 2d 944 (Ala. 2001):
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> > "'"'A writ of prohibition is an extraordinary writ which is to be employed with extreme caution and used only in cases of extreme necessity. Ex parte State Dep't of Mental Health & Mental Retardation, 536 So. 2d 78 (Ala. Civ. App. 1988); see also

[5]This Court has the authority to treat an action according to its substance and not its style. See Ex parte Deramus, 882 So. 2d 875 (Ala. 2002).

> Ex parte Perry County Board of Education, 278 Ala. 646, 180 So. 2d 246 (1965). Prohibition is not a favored writ and will not issue unless there is no other adequate remedy. Ex parte Strickland, 401 So. 2d 33 (Ala. 1981); Barber Pure Milk Co. of Montgomery, Inc. v. Alabama State Milk Control Board, 274 Ala. 563, 150 So. 2d 693 (1963); Ex parte Burch, 236 Ala. 662, 184 So. 694 (1938). The petition for the writ "properly tests jurisdiction, and lies when a court acts in excess of its jurisdiction." Ex parte City of Tuskegee, 447 So. 2d 713, 716 (Ala. 1984). The writ is preventive rather than corrective and is utilized to prevent the usurpation of excessive jurisdiction by a judicial tribunal. Ball v. Jones, 272 Ala. 305, 132 So. 2d 120 (1961); see also Mental Health, supra. Issuance of a writ of prohibition lies within the discretion of the court, and the writ is granted or withheld according to the nature and circumstances of the case, not as a matter of right. Barber, supra; Dear v. Peek, 261 Ala. 137, 73 So. 2d 358 (1954). "Prohibition is the proper remedy to intercept and put an end to usurpation of jurisdiction." Ex parte State ex rel. Bragg, 240 Ala. 80, 85, 197 So. 32, 36 (1940).'"'

"799 So. 2d at 947, quoting Ex parte Moody, 681 So. 2d 276, 276-77 (Ala. Crim. App. 1996), quoting in turn Ex parte Shoemaker, 644 So. 2d 958, 959 (Ala. Civ. App. 1993), rev'd on other grounds, 644 So. 2d 961 (Ala.), on remand, 644 So. 2d 966 (Ala. Civ. App. 1994)."

Ex parte Alabama Bd. of Pardons & Paroles, 849 So. 2d at 257-58.

> "In order to prevail on a petition for a writ of prohibition, the petitioner must show: (1) that there has been an usurpation or abuse of power, (2) that there is no other adequate remedy at law, (3) that the petitioner has suffered injury and (4) that the question has been presented to the inferior court. Barber Pure Milk Co. v. Alabama State Milk Control Bd., 274 Ala. 563, 150 So. 2d 693 (Ala. 1963)."

State v. Crossman, 687 So. 2d 817, 819 (Ala. Crim. App. 1996).

My reason, in part, for determining that this petition is a petition for a writ of prohibition is that I believe the test set out for mandamus relief has no application to the facts in this case. Indeed, to establish the requirements for a writ of mandamus the circuit court must have had an "imperative duty to perform accompanied by a refusal to do so." See Ex parte Vance, 900 So. 2d 394 (Ala. 2004).[6] Here, Judge Carter clearly acted but it is my belief that his actions were beyond the scope of his jurisdiction; thus, the proper remedy is a writ of prohibition.

Fourth, I believe that Judge Carter's ruling dismissing with prejudice the 12-count indictment against Cantrell was

[6]The four requirements for mandamus relief are: (1) a clear legal right to the relief sought; (2) an imperative duty to perform accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the reviewing court. Ex parte Vance, 900 So. 2d at 397.

void; therefore, a motion to stay the circuit court proceedings was unnecessary because it would have had no legal impact. "'A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree.'" Boykin v. Law, 946 So. 2d 838, 849 (Ala. 2006), quoting Loyd v. Director, Dep't of Pub. Safety, 480 So. 2d 577, 579 (Ala. Civ. App. 1985). A void judgment is subject to attack at any time. State v. Utley, 94 So. 3d 414, 416 (Ala. Crim. App. 2012). Also, neither this Court nor the circuit court may stay a void judgment; thus, the failure to file or grant a stay "does not deprive this Court of jurisdiction to entertain" the jurisdictional aspect of this petition. See State v. Utley, 94 So. 2d at 416.[7] In fact, this Court has a duty to notice all jurisdictional defects ex mero motu. See Nunn v. Baker,

[7]In its petition, the State attacks the circuit court's ruling on the motion for a mistrial but states that any relief on that issue "would have no practical effect, since the jury has already been discharged." (State's brief, at p. 1 n. 1.) However, because no stay was granted any issue concerning the merits of that motion are not properly before this Court. See State v. Webber, 892 So. 2d 869, 871 (Ala. 2004).

518 So. 2d 711, 712 (Ala. 1987) ("[J]urisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.").

In this case, the State established that Judge Carter usurped his jurisdiction by dismissing Cantrell's 12-count indictment with prejudice, that the State had no adequate remedy at law, that the State suffered injury, and that the issue was properly presented to the lower court before this petition was filed. Therefore, the State clearly established all the necessary requirements for the issuance of a writ of prohibition. See Crossman, 687 So. 2d at 819.

For these reasons, I believe that this Court should issue this extraordinary writ; therefore, I must dissent.