

REL: April 17, 2020

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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

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CR-19-0238

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Ex parte City of Andalusia

PETITION FOR WRIT OF MANDAMUS

(In re: City of Andalusia v. Christopher Terry Clinton)

Covington Circuit Court Nos. CC-19-339; CC-19-340;  
CC-19-341; CC-19-342; CC-19-343; CC-19-344; CC-19-345;  
CC-19-346; CC-19-347; CC-19-348; CC-19-349; and CC-19-350

MINOR, Judge.

The City of Andalusia ("the City") petitions for a writ of mandamus directing the Covington Circuit Court to grant the City's motion to dismiss Christopher Terry Clinton's appeal of his convictions in the Andalusia Municipal Court. In denying

the petition, we hold that Clinton, whom the circuit court found indigent and entitled to a waiver of an appeal bond, perfected his appeal under § 12-14-70, Ala. Code 1975, and Rule 30.3, Ala. R. Crim. P., by timely filing a notice of appeal and timely requesting a waiver of an appeal bond within the 14-day period set out in Rule 30.3 and § 12-14-70.

Facts and Procedural History

Clinton was convicted on September 9, 2019, in the Andalusia municipal court of 12 offenses.<sup>1</sup> Clinton's attorney in the municipal court, William Alverson, filed a handwritten notice of appeal with the municipal clerk after Clinton's trial ended that night.<sup>2</sup> One week later, Clinton, acting pro se, filed in the circuit court a petition for an appeal bond and a petition for a writ of habeas corpus. The Andalusia municipal-court clerk met with Clinton in the county jail on September 23, 2019, so that Clinton could fill out a form

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<sup>1</sup>The City states that Clinton's 12 convictions arose from his alleged involvement in two high-speed chases with Andalusia law-enforcement officers; the first chase occurred on June 13, 2019, and the second chase occurred on August 14, 2019, while Clinton was out on bond from the charges related to the first case.

<sup>2</sup>The City's municipal court meets at 5:00 p.m. on Monday nights.

CR-19-0238

MC-16, "Notice of Appeal to the Circuit Court," for each conviction. Clinton signed the first page of each form and indicated that he wanted a trial de novo before a jury in the circuit court.<sup>3</sup>

On the 14th day after his convictions, Clinton moved the municipal court for a waiver of the appeal bond and an extension of time in which to perfect his appeal. Clinton, in the handwritten motion, stated that he is disabled, indigent, and unemployed and that he had just learned "of the requirement of an appeal bond." That same day, the municipal court entered an order stating that Clinton had not filed an appeal bond and that the municipal court had not denied Clinton an appeal bond. The municipal court directed the clerk to transfer the appeal to the circuit court for that court to determine whether the appeal had been perfected.

On September 30, 2019, the circuit court found Clinton

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<sup>3</sup>The second page of form MC-16 has three sections: (1) "Appeal Bond," which states the amount of the bond and has a place for the defendant's signature; (2) "Affidavit of Surety(ies)," where a surety or sureties could sign; and (3) a section for the bond to be "approved" or "waived." The first section of the second page of each form was filled out with the amount of a bond, but Clinton did not sign the second pages. The second and third sections were not completed on any of the forms.

indigent and appointed counsel to represent him. The circuit court held a hearing on October 17, 2019, to consider Clinton's request for an appeal bond or a waiver of the bond.<sup>4</sup> The circuit court also considered a motion to dismiss the appeal the City had filed.<sup>5</sup>

The circuit court entered an order on December 5, 2019, in which it (1) denied the City's motion to dismiss; (2) granted in part Clinton's motion for an appeal bond (the court set it at the amount of \$2,000, which the municipal court already had set as a pretrial bond); and (3) reversed the municipal court's failure to grant Clinton's request for a waiver of an appeal bond.

The City petitioned this Court for a writ of mandamus

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<sup>4</sup>The City states that "[b]ecause of the short period of time between the circuit court's order and the filing of this petition, the City is unable to secure a written record of the October 17 hearing." (Petition, p. 5 n.2.) Clinton's answer lists as exhibits a transcript of the October 17, 2019, hearing and a hearing held on December 9, 2019. The answer does not include those transcripts, however, but states: "Please see court record requested transcript." The answer does not state who requested the transcripts, and no transcript of either hearing has been provided to this Court. Under the circumstances, however, those transcripts are unnecessary for the disposition of this petition.

<sup>5</sup>The City's motion to dismiss is not included in the materials before us.

directing the circuit court to vacate its order denying the City's motion to dismiss the appeal and to enter an order dismissing Clinton's appeal. This Court granted the City's motion to stay the proceedings in the circuit court pending the outcome of this petition.

#### Discussion

To obtain a writ of mandamus, the City must show: "(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 [this] court." Ex parte Wyre, 74 So. 3d 479, 480-81 (Ala. Crim. App. 2011) (citing State v. Williams, 679 So. 2d 275 (Ala. Crim. App. 1996)). The City argues that it has a clear legal right to relief because, it says, Clinton failed to secure, within 14 days of his convictions in the municipal court, an approved appeal bond or a waiver of a bond. The City relies mainly on Rule 30.3(b), Ala. R. Crim. P., and Albritton v. Municipality of Cottonwood, 491 So. 2d 1096 (Ala. Crim. App. 1986).

First, we question whether the City has complied with Rule 21, Ala. R. App. P., because the City failed to include

a copy of its motion to dismiss Clinton's appeal. Rule 21(a)(1)(E), Ala. R. App. P., requires a petition for a writ of mandamus to include the "parts of the record that would be essential to an understanding of the matters set forth in the petition."<sup>6</sup> See, e.g., Ex parte Lucas, 165 So. 3d 618, 621 (Ala. Civ. App. 2014). But assuming that the materials we have before us are sufficient, the City has no right to relief.

In Albritton, this Court examined the 14-day time limit in § 12-14-70(c), Ala. Code 1975, for filing a notice of appeal of a municipal-court conviction for a trial de novo in the circuit court. The defendant in that case filed the notice of appeal within the applicable 14-day time but did not secure an appeal bond until after the 14 days had lapsed. This Court held:

"The legislature obviously intended that the two requirements of filing a 'notice of appeal and giving bond' must be met, unless the municipal court waives the appearance bond for any of the reasons specified in the statute. The manner in which a defendant must perfect an appeal is clearly stated, and, as this court, per Judge Bookout, stated in Wood v. City of Birmingham, [380 So. 2d 394 (Ala. Crim. App. 1980)], 'a court cannot extend, expand, or otherwise modify the time for perfecting an

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<sup>6</sup>Rule 21(a), Ala. R. App. P., was amended effective April 1, 2020. As part of that amendment, Rule 21(a)(1)(E) became Rule 21(a)(1)(F).

appeal. A court cannot breathe life into a dead appeal.' Id. at 396. The appellant's failure, for whatever reason, to file the appeal bond within the time limit specified by statute is fatal to his appeal."

491 So. 2d at 1098.

Section 12-14-70(c) provides:

"A defendant may appeal in any case within 14 days from the entry of judgment by filing notice of appeal and giving bond, with or without surety, approved by the court or the clerk in an amount not more than twice the amount of the fine and costs, as fixed by the court, or in the event no fine is levied the bond shall be in an amount not to exceed \$1,000.00, as fixed by the court, conditioned upon the defendant's appearance before the circuit court. The municipal court may waive appearance bond upon satisfactory showing that the defendant is indigent or otherwise unable to provide a surety bond. If an appeal bond is waived, a defendant sentenced to imprisonment shall not be released from custody, but may obtain release at any time by filing a bond approved by the municipal court. If defendant is not released, the prosecutor shall notify the circuit clerk, and the case shall be set for trial at the earliest practicable time."<sup>7</sup>

Rule 30, Ala. R. Crim. P., recognizes the statutory right to appeal found in § 12-14-70. And Rule 30.3(b) continues the requirement that the defendant timely file a notice of appeal and give a bond or secure a waiver of a bond. Cf. Ex parte

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<sup>7</sup>Section 12-14-70(c) was last amended in 1989. See Act No. 89-809, Ala. Acts 1989. When Albritton was decided, § 12-14-70(c) set the bond amount as "not more than \$500 and costs."

City of Tarrant, 850 So. 2d 366 (Ala. Crim. App. 2002) ("After reading Rule 30.3 and § 12-14-70 together, the conclusion is clear--before an appeal from a municipal court to a circuit court can be perfected, a written notice of appeal and an appeal bond approved by the municipal court or the clerk must be filed with the municipal court clerk's office.").

Clinton filed a timely notice of appeal and a timely request for a waiver of an appeal bond. That request for a waiver of the appeal bond was not granted, however, until the circuit court entered its October 17, 2019, order--well after the 14-day time for Clinton to perfect his appeal had lapsed.

So far as we can determine, neither this Court nor the Alabama Supreme Court has addressed the question presented in this case: May an indigent defendant seeking to appeal a municipal-court conviction under § 12-14-70, Ala. Code 1975, and Rule 30, Ala. R. Crim. P., perfect that appeal by timely filing a notice of appeal and timely requesting a waiver of an appeal bond within the 14-day time in Rule 30.3, Ala. R. Crim. P., and § 12-14-70, Ala. Code 1975? Under the circumstances of this case, we hold that Clinton's timely filing of the notice of appeal and his timely request for a waiver of the



appeal bond based on indigency were sufficient to perfect his appeal to the circuit court.<sup>8</sup>

In its October 17, 2019, order, the circuit court found that Clinton had applied in the municipal court for a waiver of the appeal bond because he was indigent. The circuit court found that it was "unclear exactly what occurred" with the request for a waiver of the bond, but the circuit court treated the request as having been denied by the municipal court. That finding was correct. See Rule 24.4, Ala. R. Crim. P. ("A failure by the trial court to rule on [a posttrial] motion within the sixty (60) days allowed by this section shall constitute a denial of the motion as of the sixtieth day ...."); Rule 24.5, Ala. R. Crim. P. (reducing the time from 60 days to 14 days for a posttrial motion pending in a municipal court).

The circuit court also had the authority to treat the municipal court's denial of Clinton's request for a waiver as being properly before it.<sup>9</sup> The Alabama Constitution authorizes

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<sup>8</sup>Because Clinton is indigent, Albritton, in which the defendant's ability to pay was not questioned, is distinguishable.

<sup>9</sup>The circuit court found that there was a "seeming lack of any appeal for [Clinton] if his request for an appeal bond

the legislature to provide for circuit courts "to review ... decisions of inferior courts." § 142, Ala. Const. 1901 (Off. Recomp.). The Constitution gives circuit courts the "authority to issue such writs as may be necessary or appropriate to effectuate its powers" and to "have such other powers as may be provided by law." Id.

Under § 12-14-70(a), Ala. Code 1975, the legislature has provided that "[a]ll appeals from judgments of municipal courts shall be to the circuit court of the circuit in which the violation occurred for trial de novo." With this appellate jurisdiction over judgments of municipal courts, the legislature has directed circuit courts to "exercise a general superintendence over ... municipal courts." § 12-11-30(4), Ala. Code 1975. The circuit court thus had jurisdiction over Clinton's appeal, and it also had the authority--whether by its appellate jurisdiction, its jurisdiction over extraordinary writs directed to the municipal court, or by its "general superintendence" jurisdiction over the municipal

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is denied or simply not acted upon." It reasoned that it must have jurisdiction because otherwise "the decision about ability to pay [would be] solely in the hands of the lower court with no recourse." This reasoning is sound--and, as we will discuss, supported by Alabama law.

court--to review the Andalusia municipal court's decision not to grant Clinton's request for a waiver of the appeal bond. Cf. Ex parte Butler, [Ms. CR-18-0066, Oct. 25, 2019] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2019) (treating a notice of appeal as a petition for a writ of mandamus).

The circuit court found that Clinton was indigent, and it reversed the municipal court's decision not to grant his timely request for a waiver of an appeal bond. The City has not shown that the circuit court abused its discretion in so deciding.

The City does not dispute that Clinton is indigent. Instead, it argues that Clinton's handwritten request for a waiver, which Clinton's attorney signed, was defective because it was "unsworn." But the City cites no controlling authority showing that such a request must be sworn.<sup>10</sup> And, even if

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<sup>10</sup>The sole authority the City cites is the following statement: "In order to perfect an appeal to the circuit court, the defendant must file either a bond for costs or an affidavit of indigency with the trial court clerk, or the municipal or district court clerk, whichever is applicable." Hugh Maddox, Alabama Rules of Criminal Procedure § 30.3 (5th ed. 2019) (emphasis added). Although the better practice is to submit an affidavit of indigency--rather than an unsworn statement of indigency--we are aware of no legal requirement that the statement be sworn for a waiver request under § 12-14-70, Ala. Code 1975.

there were such a requirement, that would not necessarily mean the City has a right to relief. The Alabama Supreme Court has held that statutory verification requirements may be subject to waiver. See, e.g., Ex parte Collins, 84 So. 3d 48, 53 (Ala. 2010) ("[T]he verification of the petition does not limit the power of the circuit court to adjudicate the petition. ... [I]f the respondent does not properly raise the verification requirement in the circuit court, that issue is waived."). The City has not shown that it objected to the lack of verification in the municipal court or the circuit court.

The circuit court's reversal of the municipal court's failure to grant Clinton's timely filed request for a waiver of an appeal bond means that Clinton obtained a waiver of the bond. We must decide, then, whether that waiver was timely under § 12-14-70.

This Court has held, at least implicitly, that an appeal is perfected where a municipal court erroneously denies a petitioner's timely request for an appeal bond and that decision is later reversed. See Ex parte Gilham, 684 So. 2d 164, 166 (Ala. Crim. App. 1995) ("[B]ased on Rule 30.3 and on § 12-14-70, we conclude that the [circuit] court [and, in

turn, the municipal court] erred in denying the petitioner's request for bond. The posting of a bond is necessary in order to perfect an appeal from municipal court to circuit court. As stated above, the maximum bond that can be set is twice the amount of the fine and costs, not to exceed \$1,000. The petition for a writ of habeas corpus must therefore be granted." (emphasis added)). We have not, so far as we can determine, held that an appeal from municipal court is perfected if the municipal court erroneously refuses to grant the defendant's timely request for a waiver of a bond. Under the circumstances of this case, we hold that Clinton's appeal was perfected under Rule 30.3 and § 12-14-70.

This Court decided a similar question in Hyde v. State, 950 So. 2d 344 (Ala. Crim. App. 2006), in which this Court examined whether a Rule 32, Ala. R. Crim. P., petition was timely where the petitioner, through counsel, timely filed both the petition and a request to proceed in forma pauperis ("IFP request"), but the circuit court did not grant the IFP request until after the limitations period had expired. This Court looked to prior versions of Rule 32.6(a), Ala. R. Crim.

P.,<sup>11</sup> and § 12-19-70, Ala. Code 1975,<sup>12</sup> and cases interpreting

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<sup>11</sup>At the time relevant to the decision in Hyde, Rule 32.6(a) stated:

"(a) Form, Filing, and Service of Petition. A proceeding under this rule is commenced by filing a petition, verified by the petitioner or petitioner's attorney, with the clerk of the court. A petition may be filed at any time after entry of judgment and sentence (subject to the provisions of Rule 32.2(c)). The petition should be filed by using or following the form accompanying this rule. If that form is not used or followed, the court shall return the petition to the petitioner to be amended to comply with the form. The petition shall be accompanied by two copies thereof. It shall also be accompanied by the filing fee prescribed by law or rule in civil cases in circuit court unless the petitioner applies for and is given leave to prosecute the petition in forma pauperis, in which event the fee shall be waived. ... Upon receipt of the petition and the filing fee, or an order granting leave to the petitioner to proceed in forma pauperis, the clerk shall file the petition and promptly send a copy to the district attorney (or, in the case of a petition filed in the municipal court, to the municipal prosecutor)."

(Emphasis added.)

<sup>12</sup>When Hyde was decided § 12-19-70 provided:

"(a) There shall be a consolidated civil filing fee, known as a docket fee, collected from a plaintiff at the time a complaint is filed in circuit court or in district court.

"(b) The docket fee may be waived initially and taxed as costs at the conclusion of the case if the court finds that payment of the fee will constitute

those provisions and held:

"A Rule 32 petition is deemed filed for purposes of the limitations period the date the petition, accompanied by a request to proceed in forma pauperis, is submitted to the circuit court, not the date the circuit court grants the request to proceed in forma pauperis. To hold otherwise would allow inadvertence on the part of a circuit court in failing to rule on a request to proceed in forma pauperis, as occurred in this case, to operate as a time-bar to a petition that was properly submitted in accordance with the requirements in Rule 32.6(a) within the limitations period and would directly conflict with cases from both the Alabama Supreme Court and this Court indicating that the correct filing date of a Rule 32 petition is the date the petition and the in forma pauperis request are submitted, not the date the in forma pauperis request is granted."

950 So. 2d at 353 (emphasis added). This Court discussed the Alabama Supreme Court's holding in De-Gas, Inc. v. Midland Resources, 470 So. 2d 1218 (Ala. 1985), that

""[t]he use of the term 'shall' in this provision [§ 12-19-70, Ala. Code 1975,] makes the payment of the filing fee mandatory. See Prince v. Hunter, 388 So. 2d 546, 547 (Ala. 1980). It was the obvious intent of the legislature to require that either the payment of this fee or a court-approved verified statement of substantial hardship accompany the complaint at the time of filing.""

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a substantial hardship. A verified statement of substantial hardship, signed by the plaintiff and approved by the court, shall be filed with the clerk of court."

Hyde, 950 So. 2d at 350-51 (quoting Clemons v. State, 55 So. 3d 314, 334 (Ala. Crim. App. 2003), rev'd on other grounds, 55 So. 3d 348 (Ala. 2007) (emphasis added; emphasis omitted)). This Court in Hyde concluded that the De-Gas analysis turned on whether the plaintiff showed a "bona fide" intent to proceed with the action. And this Court held that, "by submitting a request to proceed in forma pauperis with the petition, a petitioner shows a bona fide intent to proceed with the Rule 32 proceeding."<sup>13</sup> 950 So. 2d at 353.

The reasoning of Hyde applies with equal force here. Clinton, by timely filing a notice of appeal and timely requesting a waiver of an appeal bond based on indigency within the 14-day period in Rule 30.3 and § 12-14-70 showed a bona fide intent to proceed with his appeal. Thus, once the

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<sup>13</sup>In Ex parte Courtyard Citiflats, LLC, 191 So. 3d 787, 790-91 (Ala. 2015), in an opinion written by Justice Shaw (who authored Hyde when he was a judge on this Court), the Alabama Supreme Court held that in a civil action, § 12-19-70 requires court approval of the statement of substantial hardship within the statutory limitations time. Courtyard Citiflats did not mention or overrule Hyde, however, and it appears to be limited to actions that are purely civil in nature. And the legislature's 2019 amendment to § 12-19-70(b) appears to have abrogated Courtyard Citiflats. § 12-19-70(b), Ala. Code 1975 ("The accompanying pleading shall be considered filed on the date that the verified statement of substantial hardship is filed with the court.").



circuit court reversed the municipal court's denial of the bond-waiver request, Clinton's appeal was perfected under § 12-14-70. Cf. Ex parte Gilham, 684 So. 2d at 166. A contrary holding would permit the municipal court to effectively insulate its decisions from appellate review by refusing to rule on a waiver request or by waiting until the 11th hour to deny such a request.<sup>14</sup>

The City has not shown that it has "a clear legal right to the relief sought"--a dismissal of Clinton's appeal for a trial de novo in the circuit court. Thus, we deny the City's petition for a writ of mandamus, and we lift the stay of the underlying proceedings.

PETITION DENIED.

Cole, J., concurs. Kellum, J., concurs in the result. Windom, P.J., dissents, with opinion, which McCool, J., joins.

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<sup>14</sup>As noted above, see supra note 9, the circuit court reasoned that it must have jurisdiction to review the municipal court's refusal to grant a waiver of the appeal bond because otherwise "the decision about ability to pay [would be] solely in the hands of the lower court with no recourse."

WINDOM, Presiding Judge, dissenting.

Rule 30.3, Ala. R. Crim. P., states, in relevant part, that an "appeal from the municipal or the district court for trial de novo in the circuit court shall be perfected by the timely filing of a written notice of appeal and the posting of a new bond in an amount fixed by the municipal or district judge." There is no dispute that Christopher Terry Clinton timely filed a notice of appeal. The issue before this Court is whether Clinton's filing of a timely request to waive the appeal bond was sufficient to perfect his appeal to the Covington Circuit Court. I do not believe it was; therefore, I respectfully dissent.

As an initial matter, I believe the City's petition complied with Rule 21, Ala. R. App. P. Rule 21(a)(1)(E), Ala. R. App. P.,<sup>15</sup> requires that the petitioner attach to the petition an appendix that includes "copies of any order or opinion or parts of the record that would be essential to an understanding of the matters set forth in the petition." The main opinion cites the absence of the City's motion to dismiss

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<sup>15</sup>Rule 21(a), Ala. R. App. P., was amended effective April 1, 2020. As a result of that amendment, Rule 21(a)(1)(E) was renumbered as Rule 21(a)(1)(F).

CR-19-0238

but does not specifically assert how the absence of that motion impeded this Court's understanding of the matters set forth in the petition. The petition and its attachments adequately apprise this Court of the issue and all the facts necessary to make a determination. Therefore, I would not deny the City's petition for a failure to comply with Rule 21, Ala. R. App. P.

Turning now to the substantive issue before this Court, Lumpkin v. State, 171 So. 3d 599, 609 (Ala. 2014), instructs that "whether a mandated cost bond is required to be filed within the statutory period for taking an appeal always depends on the language of the applicable statute authorizing that particular appeal." An appeal from a municipal court to a circuit court is governed by Rule 30.3, Ala. R. Crim. P., and § 12-14-70, Ala. Code 1975. Because the rule and the statute relate to the same subject matter, they must be read in pari materia, see Burlington Northern R.R. v. Whitt, 611 So. 2d 219, 222 (Ala. 1992); however, where the rule and the statute conflict, the rule controls. See Ex parte Oswald, 686 So. 2d 368, 370-71 (Ala. 1996) (recognizing the supremacy of the Alabama Rules of Criminal Procedure over statutes related

to the administration of all courts and rules governing practice and procedure in all courts).

For a defendant to appeal a final judgment entered by a municipal court to a circuit court for trial de novo, Rule 30.3(a), Ala. R. Crim. P., requires that the defendant must file a written notice of appeal with the clerk of the municipal court within 14 days from the date of pronouncement of sentence or the date of the denial of a timely filed post-trial motion, whichever is later.<sup>16</sup> And, again, the rule states that to perfect an appeal from the municipal court to the circuit court for trial de novo, a defendant must timely file a written notice of appeal and post a new bond in an amount fixed by the municipal judge. Rule 30.3(b), Ala. R. Crim. P. Rule 30.3(b) also allows for the bond to be waived by the municipal court. Rule 30.3 does not explicitly establish a time for posting bond; § 12-14-70, Ala. Code 1975, does, however. The statute states that "[a] defendant may appeal in any case within 14 days from the entry of judgment by filing notice of appeal and giving bond." (Emphasis

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<sup>16</sup>The petition does not indicate that Clinton filed a post-trial motion in this case.

CR-19-0238

added.) Because the wording of the statute is plain and unambiguous, the clearly expressed intent of the legislature must be given effect. Ex parte Ankrom, 152 So. 3d 397, 410 (Ala. 2013) (citations omitted). Reading the rule and the statute in pari materia, I believe that to confer appellate jurisdiction on the circuit court, Clinton had to file a written notice of appeal with the clerk of the municipal court and post a new bond or have that bond waived within 14 days of sentencing by the municipal court. See Albritton v. Municipality of Cottonwood, 491 So. 2d 1096, 1098 (Ala. Crim. App. 1986) ("The legislature obviously intended that the two requirements of filing a 'notice of appeal and giving bond' must be met, unless the municipal court waives the appearance bond for any of the reasons specified in the statute."). Clinton failed to do so.

The main opinion asserts that the circuit court had authority to review the failure of the municipal court to grant Clinton a waiver of the required bond and then to grant that waiver, but it does not specifically pinpoint the source of that authority. The main opinion suggests that the authority could derive from "its appellate jurisdiction, its

CR-19-0238

jurisdiction over extraordinary writs directed to the municipal court, or by its 'general superintendence' jurisdiction over the municipal court."

Indeed, circuit courts have "a general superintendence" over municipal courts. § 12-11-30(4), Ala. Code 1975. "Encompassed in this superintendence is the power to review certain judgments and orders of the [municipal] court, either through direct appeal or by petition for an extraordinary writ." Franks v. Norfolk Southern Ry. Co., 679 So. 2d 214, 216 (Ala. 1996) (citing Helms v. McCollum, 447 So. 2d 687 (Ala. 1984)). However, as stated earlier, I do not believe the circuit court acquired appellate jurisdiction in this matter because Clinton did not perfect his appeal in accordance with Rule 30.3 and § 12-14-70. Further, it is unclear to me that Clinton petitioned the circuit court for an extraordinary writ to review the municipal court's judgment, or lack thereof, with respect to his requested waiver of the bond. Yet, even if Clinton did so, the circuit court's review must nonetheless be conducted within the jurisdictional time constraint, which, in this case, was 14 days from sentencing. See State v. Webber, 892 So. 2d 869, 871 (Ala. 2004) ("The

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 perfecting a filing in the case." (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)).

The main opinion skirts the 14-day jurisdictional time constraint by employing the relation-back doctrine discussed in Hyde v. State, 950 So. 2d 344 (Ala. Crim. App. 2006). I find Hyde unavailing for two reasons. First, Hyde was based on the specific wording of Rule 32.6(a), Ala. R. Crim. P. -- wording that is not shared by Rule 30.3, Ala. R. Crim. P., or § 12-14-70, Ala. Code 1975. Second, Hyde used the relation-back doctrine to prevent inadvertence on the part of a circuit court from exposing a petitioner to a procedural, as opposed to jurisdictional, time-bar. See Ex parte Clemons, 55 So. 3d 348, 354 (Ala. 2007). Here, though, we are faced with a jurisdictional time constraint. Consequently, the circuit court could not retroactively approve Clinton's request to

CR-19-0238

waive the bond. See Ex parte Courtyard Citiflats, LLC, 191 So. 3d 787, 792 (Ala. 2015) (holding that a jurisdictional defect could not be cured nunc pro tunc).

To perfect an appeal from the municipal court to the circuit court for a trial de novo, § 12-14-70 and Rule 30.3 require a defendant to file a written notice of appeal with the clerk of the municipal court and to post a new bond or to have that bond waived within 14 days from the date of pronouncement of sentence or the date of denial of a timely filed posttrial motion, whichever is later. The holding of the main opinion effectively elevates a request by an indigent defendant to waive the required bond to the level of the actual waiver of the bond. In other words, this holding expands the wording of § 12-14-70 and Rule 30.3. As such, I believe this holding encroaches on the purview of the legislature and the rule-making authority of the Alabama Supreme Court. See Ala. Const. 1901, Art. III, § 42 and § 12-2-7(4), Ala. Code 1975.

A writ of mandamus will be granted 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 Ocwen Federal Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003) (quoting Ex parte Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991)). Mandamus will lie to direct a trial court to vacate a void judgment or order. Ex parte Chamblee, 899 So. 2d 244, 249 (Ala. 2004)."

Ex parte Sealy, L.L.C., 904 So. 2d 1230, 1232 (Ala. 2004).

Because more than 14 days had passed since the municipal court sentenced Clinton, I do not believe that the circuit court had authority to grant Clinton's request to waive the required bond. Clinton did not perfect his appeal, and the City was therefore entitled to have its motion to dismiss granted by the circuit court. Accordingly, I would hold that the City has satisfied its burden for mandamus relief. I believe this petition for a writ of mandamus is due to be granted, and that the Covington Circuit Court should be directed to set aside its order denying the City's motion to dismiss and to grant the same.<sup>17</sup> Therefore, I respectfully

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<sup>17</sup>The circuit court stated in its order denying the city's motion to dismiss:

"The issue for this Court is the seeming lack of any appeal for the Defendant if his request for an appeal bond is denied, or simply not acted upon.

CR-19-0238

dissent.

McCool, J., concurs.

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This would essentially leave the decision about ability to pay solely in the hands of the lower court with no recourse. In fact, if you extend the ruling in Bradshaw v. Town of Argo, 200 So. 3d 680 (Ala. Crim. App. 2015), to its logical conclusion, a municipality could simply never act on the appeal bond portion of the appeal form provided to Defendants (MC-16) and deprive a Defendant of his right to appeal in every case."

(City's petition, Exhibit 1.)

While understandable, implicit in the circuit court's concern is a level of cynicism with respect to municipal courts that I do not share. Further, I do not believe defendants in Clinton's position are without recourse; Clinton, for instance, could seek an out-of-time appeal by filing a Rule 32 petition in the municipal court. See Rule 32.1(f), Ala. R. Crim. P.