

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: JUNE 16, 2005

NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2004-SC-000871-MR

DATE 7-7-05 EWA/Graun/PC

TASIA HOOTEN

APPELLANT

v.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2004-CA-001774-OA

WILLIAM T. JENNINGS, JUDGE
CLARK CIRCUIT COURT

APPELLEE

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY
IN INTEREST

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On April 21, 2004, the Clark District Court established probable cause that Tasia Hooten committed an offense falling within the purview of KRS 635.020(2), (3), (5), (6), (7), or (8). Thus, the District Court had the option to proceed with juvenile jurisdiction or to transfer the case to Circuit Court. After weighing the eight factors necessary to determine if transferring the case to Circuit Court was proper pursuant to KRS 640.010(2)(b), the Clark District Court waived juvenile court jurisdiction and transferred the case to Clark Circuit Court.

Tasia Hooten was sixteen years old at the time she participated in the crime. On April 8, 2004, she and her two cousins took part in the robbery of a Best Western Hotel in Winchester, Kentucky. Evidence presented at the youthful offender hearing established that Tasia went into the hotel asking for room rates

just before it was robbed. One of Tasia's cousins/co-defendants allegedly raped the hotel clerk. Tasia matched the physical description given to the police and was implicated by her cousins (co-defendants) in the robbery.

Following the transfer, Appellant was indicted for first-degree robbery on May 13, 2004. Thereafter, on August 10, 2004, she moved to dismiss the indictment for lack of jurisdiction. The Clark Circuit Court denied the motion on August 26, 2004. It is from that denial that she filed the original action for writ of prohibition in the Court of Appeals on September 1, 2004. It was denied on September 24, 2004. On October 13, 2004, Appellant brought this matter of right appeal from the Court of Appeal's denial of the writ. Ky. Const. § 115.

Later, on November 23, 2004, she entered a conditional guilty plea to an amended charge of facilitation to commit first-degree robbery, a class D felony, and was sentenced to a five-year prison term. The plea was conditioned on her being able to appeal based on jurisdiction. Appellant then filed a notice of appeal from her guilty plea on February 15, 2005, based on the Circuit Court's lack of jurisdiction. Thereafter, on March 21, 2005 the Appellant filed a motion to transfer that appeal from the Court of Appeals to this Court. The transfer is now pending before this Court. (*Tasia Hooten v. Judge William Jennings, Clark Circuit Court*, case no. 2005-SC-142). Both the appeal from the conviction and the appeal from the denial of the writ are based on allegations the Circuit Court acted without jurisdiction.

The granting of a writ of prohibition is generally left to the sound discretion of the court. The basic standard of review for the grant or denial of a writ of

prohibition is abuse of discretion. *Haight v. Williamson*, 833 S.W.2d 821 (Ky. 1992). However, where there is a question of law involved with the granting of the writ, as in this case, this Court may proceed with a *de novo* review of the decision. *Rehm v. Clayton*, 132 S.W.3d 864 (Ky. 2004).

Relief by way of prohibition or mandamus is an extraordinary remedy and we have always been both cautious and conservative in entertaining petitions for and in granting such relief. *Bender v. Eaton*, 343 S.W.2d 799, 800 (Ky. 1961). There are two situations in which a writ of prohibition may be proper. They include: 1) those where the inferior court acted without proper jurisdiction and 2) those where the inferior court acted within its jurisdiction, but erroneously. *Chamblee v. Rose*, 249 S.W.2d 775 (Ky. 1952), (CR 76.12(4)(g)).

Deciding which of the two classes of writs a case will fall under can be a difficult inquiry. Often the issue of whether or not a court acted erroneously within its jurisdiction will intertwine with the question of whether or not a court properly had jurisdiction, as it does in this case. This intermingling of issues requires this Court to carefully scrutinize both the allegations and subject matter of the action in order to decide which of the two classes of writs a case would fall under.

Thus, to make the necessary initial determination, this Court must first look to the allegations upon which an Appellant bases her request for a writ of prohibition. However, whether the case falls within the first or second class of writ cases is not determined solely by the allegations. If appropriate, the Court may also look at the arguments made by the appellant and decide if the subject

matter of the arguments conform with what the Appellant has alleged is the basis for the writ. One or both of these steps will determine whether the writ of prohibition is truly based on the court acting without jurisdiction, or if it is more properly based on the court acting erroneously within its jurisdiction.

In this case, the Appellant filed an original action in the Court of Appeals requesting a writ of prohibition to prevent her first-degree robbery trial as an adult offender. The Appellant based this request on the claim that the Circuit Court was without jurisdiction. The subject matter and allegations raised by the Appellant with regard to the actions of the Circuit Court acting without jurisdiction clearly fall under the first classification of writ cases.

The arguments made by the Appellant that the District Court's transfer order was constitutionally invalid along with her other arguments regarding the constitutionality of the statute (KRS 640.010) fall more in line with the second class of writ cases based on a lower court acting erroneously within its jurisdiction. Therefore, the subject matter of the Appellant's argument would suggest that she attempts to establish a right to a writ of prohibition based on both the Circuit Court acting without jurisdiction and the District Court acting erroneously within its jurisdiction. Thus, this Court must distinguish the standard to be applied to each of the two classes in order to determine if considering the writ of prohibition would be proper.

As stated in *Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004), Kentucky case law has been somewhat in conflict as to what standard should be applied in considering a writ of prohibition in the two classes. The issue that is most

inconsistent is whether an adequate remedy by appeal will preclude this Court from granting a writ of prohibition. In *Hoskins*, we held that the standard used in *Bender v. Eaton*, 343 S.W.2d 799 (Ky. 1961) required a showing that no adequate remedy by appeal was available when Appellant requested a writ based on the lower court acting within its jurisdiction but acting erroneously.

In *Hoskins*, this Court held that it would continue to deny a writ of prohibition, based on the lower court acting erroneously within its jurisdiction, when there was an adequate remedy by appeal. Thus, we decline to hear the issue of whether a writ of prohibition should be granted for the alleged erroneous acts of the District Court. Also, the issue involving whether KRS 640.010 is unconstitutional can be more properly addressed by way of the Appellant's appeal from her conviction.

The Appellee contends that a writ of prohibition for lack of jurisdiction can only be granted when there is no adequate remedy by appeal. This is not the modern standard that is applied to the first class of writ cases, and is not consistent with our past decisions. *Hoskins* at 9, 10. This Court in *Hoskins* made it clear that the standard used in *Chamblee* is sound and that “[this Court] now depart[s] from those cases holding that the existence of an adequate remedy by appeal precludes the issuance of a writ to prohibit a trial court from acting outside of its jurisdiction.” *Id.* at 10. However, this Court recognized in *Hoskins* the discretion this Court retains in granting or denying the writ. This Court did not proclaim that a request for a writ of prohibition for lack of jurisdiction had to be considered in all cases.

In *Hoskins*, we read the first two paragraphs of *Chamblee* as indicating that “the existence of a remedy by appeal is relevant but not the controlling factor in determining whether to issue a writ prohibiting a trial court from acting outside its jurisdiction.” *Hoskins* at 9, *Chamblee* at 775. This Court has recognized the fact that it has broad discretion in deciding whether or not to consider, grant, or deny a writ of prohibition. And even though we may consider a writ of prohibition for lack of jurisdiction, this Court still retains the discretion to refuse to grant the writ.

As stated in *Bender v. Eaton* “[t]he exercise of this [court’s] authority has no limits except our judicial discretion, and each case must stand on its own merits.” *Bender* at 800. This Court has rarely granted writs of prohibition because of the way in which a writ may interfere with the orderly progression from the trial court to the appellate court. *Id.* Because of this, Courts are hesitant to interfere with the natural progression of a case. This appears to be the basis for the divergence of authority in whether granting a writ of prohibition was proper when there was an adequate remedy by appeal. The Court of Appeals in *Bender* explained this divergence when it stated “if this avenue of relief were open to all...we would face an impossible burden of non-appellate matters.” *Id.* Despite this divergence in authority, it was firmly established by this Court in *Hoskins* that “the remedy by way of appeal is not the controlling consideration where the inferior court is without jurisdiction.” *Hoskins* at 9.

This Court maintains its right to exercise discretion in deciding whether or not to consider writs of prohibition based on lower courts acting without jurisdiction. However, due to the importance of the present case, this Court will consider

whether the Circuit Court acted without jurisdiction and if the writ of prohibition should be granted. Issuing the writ, instead of allowing for the trial to proceed, often makes sense in conserving judicial resources and achieves a just result in a more timely fashion, since it is likely that the jurisdictional question would make its way back to this Court on appeal. As stated in *Chamblee*, “it would be a most inept ruling to deny the writ, require a trial on the merits, and then on an appeal be forced to reverse the case on the very question which is now before us.” *Chamblee* at 777.

As previously stated, the question of whether the District Court could properly transfer the case to Circuit Court and whether that Court could properly exercise jurisdiction over the Appellant must be based on consideration of the eight factors set out in KRS 640.010(2)(b): the seriousness of the alleged offense; whether the offense was against persons or property, with greater weight being given to offenses against the persons; the maturity of the child as determined by her environment; the child’s prior record; the best interest of the child and community; the prospects of adequate protection of the public; the likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and evidence of a child’s participation in a gang. If two or more of the factors favor transfer, the child may be transferred to Circuit Court. KRS 640.010(2)(c).

Here, the District Court relied on three of the eight factors favoring transfer. The court found that the seriousness of the offense, the offense being committed against the person rather than property, and the fact that the best interest of the

community outweighed the best interest of the child were sufficient reasons to transfer the case to Circuit Court. Thus, the fact that the District Court complied with the requirements of KRS 635.020 and KRS 640.010 would justify the transfer to Circuit Court and would support a decision of this Court to affirm the Court of Appeal's denial of the writ of prohibition.

Further, this Court has reviewed the trial court's reasoning behind the use of these factors to transfer the case to Circuit Court as these factors are essential to the question of whether or not the Circuit Court properly exercised jurisdiction.

With regards to the District Court's application of 640.010, this Court finds that it completed a full investigation. After considering each of the eight factors, the District Court stated with adequate specificity the reasons for transferring the case to Circuit Court. The lower court also provided sufficient reasons in both the record and the order to provide for meaningful review. *Harden v. Commonwealth*, 885 S.W.2d 323, 324 (Ky. App. 1994).

The Appellant contends that two of the three factors the District Court gave do not warrant transfer. There is no dispute over the seriousness of the offense, and this clearly justifies the use of one of the three factors considered for transfer. With regards to the second factor of giving more weight to an offense against the person than to one against property, the appellant would propose that the Court of Appeals did not properly consider the specific evidence in deciding if she was committing a crime against the person. This Court agrees with the decision of the lower Court that the offense of first-degree robbery and the

particular circumstances of the case justified utilizing such a factor to support transfer to Circuit Court.

Also, the Appellant's argument that the third factor utilized by the District Court was not adequately explained in order to allow for proper review is without merit. The third factor was that the interest of the community outweighed the interest of the child. The District Court could properly decide this issue by taking the individual facts of the case into consideration, and the evidence presented supports the contention that the court proceeded with a thorough investigation by considering each of the eight factors in order to determine which ones supported transfer. *Id.* at 325.

In conclusion, we find that the Appellant's allegations and her arguments in support thereof make her request for a writ of prohibition based not only on the Circuit Court acting without jurisdiction but also on the District Court acting erroneously within its jurisdiction. In considering her argument that the Circuit Court did not have jurisdiction, we find that KRS 640.010 was properly considered in order to justify the Circuit Court exercising its jurisdiction. With regards to the purported erroneous actions of the District Court and the constitutional arguments made by the Appellant, this Court finds that the adequate remedy available through the Court of Appeals precludes this Court from hearing these issues at this time.

For the foregoing reasons, the Court of Appeals decision to deny the writ of prohibition is affirmed.¹

All concur.

¹ We note that Appellant's brief could arguably be stricken pursuant to CR 76.12(8)(a) for its failure to comply with the provisions of CR 76.12(4)(c)(i)-(iii). A statement of points and authorities allows this court to more efficiently review an Appellant's brief. The Appellant failed to include this section. This Court could strike the brief for such an omission, but we decline to do so.

COUNSEL FOR APPELLANT:

Jeffery C. Rager
BAKER, KRIZ, JENKINS & PREWITT, P.S.C.
PNC Bank Plaza
200 West Vine Street, Suite 710
Lexington, KY 40507-9709

COUNSEL FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

David A. Smith
Assistant Attorney General
Office of the Criminal Appeals
1024 Capital Center Drive
Frankfort, KY 40601-8204

William T. Jennings
Clark Circuit Court
34 S. Main Street
Winchester, KY 40391