

Serial: **185648**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-M-00840

IN RE: TIMOTHY RUSSELL

ORDER

This matter is before the Court en banc on the Emergency Petition for Writ of Extraordinary Relief filed by Timothy Russell. On May 24, 2013, the Court entered an Order staying the proceedings in the Circuit Court of the First Judicial District of Hinds County, Cause No. 12-0-887, and calling for a Response from the State of Mississippi. On July 25, 2013, the State filed a Motion for Leave to File Response Out of Time. The Court has considered that Response.

After due consideration, the Court finds that the Petition should be granted. The Court also finds that the merits of the petition may be decided at this time. The stay of the trial court proceedings should be lifted and this matter remanded to the trial court for appointment of new counsel to represent Timothy Russell.

IT IS THEREFORE ORDERED that the Motion for Leave to File Response Out of Time is granted and the Response has been considered.

IT IS FURTHER ORDERED that the stay of the proceedings in the Circuit Court of the First Judicial District of Hinds County, Mississippi, Cause No. 12-0-887 is hereby lifted.

IT IS FURTHER ORDERED that the Order Denying Defendant's Motion for Relief of Counsel and Request for Continuance, entered in Cause No. 12-0-887, is hereby vacated and this matter is remanded for Jamiel M. Wiggins and the Hinds County Public Defender to be relieved of further representation of Timothy Russell in this case and for the appointment of new counsel to represent Timothy Russell.

SO ORDERED, this the 20th day of September, 2013.

/s/ James W. Kitchens

JAMES W. KITCHENS, JUSTICE
FOR THE COURT

TO GRANT: WALLER, C.J., DICKINSON, P.J., KITCHENS, CHANDLER, PIERCE,
KING AND COLEMAN, JJ.

RANDOLPH, P.J., OBJECTS WITH SEPARATE WRITTEN STATEMENT JOINED BY
LAMAR, J.

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RANDOLPH, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. In *Beckwith v. State*, 615 So. 2d 1134, 1144 (1992), this Court stated:

Under our Constitution the State of Mississippi and our circuit judges have the authority and solemn responsibility following an indictment to proceed to final judgment in all criminal proceedings without interference. It is simply carrying [our] Rule[s] too far to hold that a majority of this Court has the authority to intervene and interpose ourselves into a circuit court criminal trial, stop all proceedings . . . to protect an alleged violation of a right that can be addressed, and if violated, fully vindicated on appeal.

¶2. In *Beckwith*, this Court addressed Beckwith's double-jeopardy claim on interlocutory appeal because the nature of a double-jeopardy claim requires immediate determination. *Id.* at 1146. Today's case does not involve a double-jeopardy claim. *See also Gibbs v. State*, 2010-IA-00819-SCT, Order No. 172566 (Miss. October 27, 2011). The merits *vel non*, of the alleged violation, should be addressed on appeal. The stay should not have been granted. However, it was and should be lifted.

¶3. I would deny the Petition, (essentially an interlocutory appeal in makeup), lift the improvidently granted stay, and remand to the trial court without further interference.

LAMAR, J., JOINS THIS SEPARATE WRITTEN STATEMENT.