

Serial: 249518

IN THE SUPREME COURT OF MISSISSIPPI

No. 2022-KA-00988-SCT

ANTHONY GERALD FOX

FILED

Appellant

v.

JAN 11 2024

STATE OF MISSISSIPPI

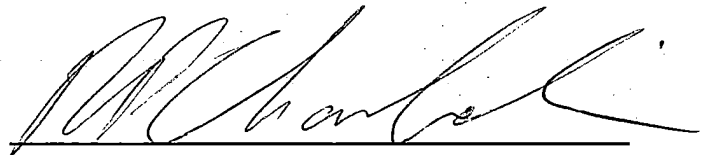
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Appellee

EN BANC ORDER

This matter is before the Court, *en banc*, on Appellant's motion. After due consideration, the Court finds that the Mississippi Rules of Appellate Procedure should be suspended pursuant to Mississippi Rule of Appellate Procedure 2(c) and that, pursuant to Mississippi Rule of Appellate Procedure 27(h)(8), this Court will review the orders denying Anthony Gerald Fox bail pending appeal and will issue a ruling in due course.

SO ORDERED, this the 11 day of January, 2024.



ROBERT P. CHAMBERLIN, JUSTICE
FOR THE COURT

JOIN: RANDOLPH, C.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

OBJECT: KITCHENS AND KING, P.JJ., AND COLEMAN, J.

KING, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS, P.J.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2022-KA-00988-SCT

Anthony Gerald Fox

v.

State of Mississippi

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

¶1. Because I believe that Mississippi Rule of Appellate Procedure 16(e) is more appropriately applicable to this matter, I object to the entry of this order.

¶2. Anthony Fox was convicted by a Hinds County jury of culpable negligence manslaughter. Fox received a sentence of twenty years, with fifteen years suspended and five years to serve. On September 26, 2022, Fox filed a notice appealing that conviction. The Supreme Court assigned his appeal to the Court of Appeals. On September 29, 2022, Fox filed a Petition for Release Pending Appeal from Judgment of Conviction. On December 2, 2022, a panel of the Court of Appeals denied his petition for release without prejudice. The Court of Appeals noted that

[p]rior to filing his motion for bail pending appeal in this Court, Fox filed a similar motion in the trial court. The trial court has not ruled on that motion. “It is preferred . . . that the trial court address bail initially before presentation to [an appellate court because] . . . [t]rial courts are familiar with the case, and in a better posture to address the amount of the bail bond.”

Order, *Fox v. State*, No. 2022-TS-00988-COA (Miss. Ct. App. Dec. 2, 2022) (alterations in original) (quoting *State v. Maples*, 445 So. 2d 540, 542 (Miss. 1984)). On December 20,

2022, the Hinds County Circuit Court entered an Order Denying Bond Pending Appeal. In that order, the trial court stated that it

finds that Anthony Fox'[s] release would constitute a special danger to a person or to the community. The Court hereby further finds that there are no peculiar circumstances of the case that render it proper for the convict, Anthony Fox, to be released after a felony conviction for manslaughter pending an appeal to the Supreme Court.

Order, *State v. Fox*, No. 20-577-AHW (Hinds Cnty., Miss., Cir. Ct. Dec. 20, 2022).

¶3. On January 5, 2023, Fox renewed his request to the Court of Appeals that he be granted bail pending an appeal. On May 1, 2023, the Court of Appeals, by a vote of five against granting bail pending appeal and five in favor of granting bail pending appeal, denied Fox's request. In the order denying bail pending appeal, the Court of Appeals quoted Mississippi Code Section 99-35-115(1)-(2)(a), which states that

[a] person convicted of any felony [other than felony child abuse, sexual battery of a minor, or any offense in which a sentence of death or life imprisonment is imposed,] shall be entitled to be released from imprisonment on bail pending an appeal to the Supreme Court, within the discretion of a judicial officer[.]

En Banc Order, *Fox v. State*, No. 2022-KA-00988-COA (Miss. Ct. App. May 1, 2023) (second and third alterations in original) (quoting Miss. Code Ann. § 99-35-115(1)-(2)(a) (Rev. 2020)). The Court of Appeals opined that "Fox is not necessarily prohibited from being released on bail pending his appeal. However, he must first show 'by clear and convincing evidence that [his] release . . . would not constitute a special danger to any other person or to the community.'" *Id.* (alterations in original) (quoting Miss. Code Ann. § 99-35-115(1)-(2)(a) (Rev. 2020)). Further, the Court of Appeals noted that "he must show that 'the

peculiar circumstances of the case [must] render it proper.” *Id.* (alterations in original) (quoting Miss. Code Ann. § 99-35-115(1)-(2)(a) (Rev. 2020)). The Court of Appeals concluded:

After a full consideration of all matters before the trial court in this cause, the trial court found that Fox’s “release would constitute a special danger to a person or to the community” and that “there are no peculiar circumstances of the case that render it proper for the convict, Anthony Fox, to be released after a felony conviction for manslaughter pending an appeal to the Supreme Court.”

After due consideration of the matters presented, we find that the circuit court did not abuse its discretion when it denied Fox’s request for bail pending appeal.

Id.

¶4. On May 8, 2023, Fox filed a request for rehearing with the Court of Appeals pursuant to Mississippi Rule of Appellate Procedure 40. By order dated June 23, 2023, the Court of Appeals denied the motion for rehearing, and, in doing so, it noted that the applicable rule to reconsider rulings on motions is Mississippi Rule of Appellate Procedure 27(h). Then on June 27, 2023, Fox filed a “Petition for Writ of Certiorari and Request to Suspend the Rules Pursuant to MRAP 27(h)(8) and MRAP 2(c) to Allow Review of Court of Appeals’ Decision to Deny Bond Pending Appeal.” Rule 27(h) provides that “[m]otions for reconsideration, vacation or modification of rulings of the Supreme Court and the Court of Appeals on motions are generally not allowed.” M.R.A.P. 27(h). Yet, exceptions are made that decisions on motions may be reconsidered as to “extraordinary cases, by suspension of the rules for good cause shown under Rule 2(c).” M.R.A.P. 27(h)(8). Mississippi Rule of Appellate Procedure 2(c) provides that this Court or the Court of Appeals may suspend the

rules “[i]n the interest of expediting decision, or for other good cause shown[.]” This Court’s order wholly fails to identify what makes this an “extraordinary case” as required by Rule 27(h)(8). Likewise, the order wholly fails to suggest any reason, justification, or good cause to mandate a suspension of the Rules of Appellate Procedure under Rule 2(c).¹

¶5. Moreover, I question whether Rule 27(h) has any applicability whatsoever to the issue at hand today. Rule 27 provides for “Reconsideration on Motions.” M.R.A.P. 27(h). A court cannot *reconsider* something that it never considered in the first place. This Court has never considered or ruled on any motion for bail pending appeal for Fox, so it defies logic that it could use Rule 27(h) as a vehicle to reconsider a motion for bail pending appeal that it has never even considered.

¶6. Absent the specific showing of good cause required for a suspension of the Rules under Rule 2(c), absent a specific showing regarding why this is an extraordinary case under Rule 27(h)(8), and absent any indication that Rule 27(h) is at all applicable, the appropriate vehicle for this Court to review this matter should it so desire is Rule 16(e), which allows this Court, on its own motion, to recall a case assigned to the Court of Appeals for any reason. M.R.A.P. 16(e). Accordingly, I object to the order allowing us to review the Court of Appeals’ decision on Fox’s renewed motion for bail pending appeal.

KITCHENS, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.

¹Moreover, neither Fox nor the Court’s order explain why a review of this order denying bail is appropriate for certiorari review under Mississippi Rule of Appellate Procedure 17.