IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. WR-83,783-01

IN RE THOMAS ALLEN SIMON, Relator

ON APPLICATION FOR A WRIT OF MANDAMUS
CAUSE NO. 42908
IN THE 424TH DISTRICT COURT OF BURNET COUNTY

Per curiam.

OPINION

Relator filed a motion for leave to file an application for a writ of mandamus, pursuant to the

original jurisdiction of this Court. The application requests that we issue a writ of mandamus in the

underlying case, ordering the district court to vacate its order removing appointed counsel. Relator

first filed a petition for writ of mandamus in the Third Court of Appeals. *In re Thomas Allen Simon*,

No. 03-15-00500-CR (Tex. App.—Austin, Aug. 25, 2015) (not designated for publication). The

Court of Appeals denied relief without comment. *Id.*

On August 26, 2015, this Court stayed the underlying proceedings, held this application in

abeyance, and ordered the Honorable Judge of the 424th Judicial District Court of Burnet County to respond. The court filed a response explaining that he removed appointed counsel because of counsel's statement that he would not be effective if the court did not grant his motion for additional funds.

While a defendant does not have a right to counsel of choice when being appointed counsel, once that attorney-client relationship is established, "the right-to-counsel provisions of the respective constitutions prevents the trial court from unreasonably interfering with the counsel duly appointed." *Stearnes v. Clinton*, 780 S.W.2d 216, 223 (Tex. Crim. App. 1989). We find that counsel's statement regarding ineffective assistance of counsel, if not granted funds, does not rise to the level necessary to allow the trial court to remove counsel over his client's objection.

We conditionally grant mandamus relief and direct the Respondent to vacate his order removing Tracy Cluck as Respondent's appointed counsel. The writ of mandamus will issue only in the event the Respondent fails to comply within thirty days of the date of this opinion.

Filed: November 4, 2015
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