

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

FILED

07/14/2021

Clerk of the
Appellate Courts

JASON L. WHITE v. STATE OF TENNESSEE

**Criminal Court for Shelby County
No. 17-01568**

No. W2021-00638-CCA-R10-PC

ORDER

The Appellant has filed a petition to rehear, pursuant to Tennessee Rule of Appellate Procedure 39, to have this Court reconsider its order entered on June 28, 2021, denying the Appellant's application for extraordinary appeal pursuant to Tennessee Rule of Appellate Procedure 10. In his original application, the Appellant sought to challenge the trial court's alleged violation of his right to proceed pro se by denying the Appellant's request to be transported from New Mexico back to Shelby County. This Court denied the Appellant's application on the basis that the Appellant failed to submit an adequate record for review. *See* Tenn. R. App. P. 10(c). This Court also noted that the state of emergency created by the COVID-19 pandemic meant that a transport order "may not have been necessary or prudent." *See In Re: COVID-19 Pandemic*, No. ADM2020-00428 (various orders).

In his petition to rehear, the Appellant asserts that "the rulings of the trial court were entered verbally at report dates" but that the trial court failed to provide him with transcripts of those report dates to include with his Rule 10 application. The Appellant asserts that he is entitled to those transcripts due to his indigency and requests that he be allowed additional time to submit transcripts in support of his claims.

Under Rule 10(c), the burden is on the party seeking an extraordinary appeal to submit an adequate record for this Court's review. *See* Tenn. R. App. P. 10(c) ("The application *shall* be accompanied by an appendix containing copies of any order or opinion relevant to the questions presented in the application and any other parts of the record necessary for determination of the application."); *State v. Fiveash*, 626 S.W.2d 477 (Tenn. Crim. App. 1981). Moreover, even with an adequate record, this Court has the discretion to grant an extraordinary appeal only when it appears that "the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review" or "if necessary for complete determination of the action on appeal."

Tenn. R. App. P. 10(a). Such circumstances “are very narrowly circumscribed to those situations in which the trial court . . . has acted in an arbitrary fashion.” Tenn. R. App. P. 10, Advisory Comm’n Cmt. This Court has again reviewed the Appellant’s pleadings, and we conclude that such circumstances are not present in this case. Given the global pandemic, the trial court’s alleged actions do not appear to be arbitrary. Moreover, any alleged violation of the Appellant’s right to self-representation can be asserted on appeal if the trial court denies his petition for post-conviction relief. *Cf. Frazier v. State*, 303 S.W.3d 674 (Tenn. 2010) (right to be represented by conflict-free counsel raised on appeal from denial of post-conviction petition).

The Appellant has failed to establish that a rehearing is warranted in this matter. Therefore, the Appellant’s petition to rehear is DENIED. Because it appears the Appellant is indigent, costs are taxed to the State.

JUDGE CAMILLE R. McMULLEN
PRESIDING JUDGE JOHN EVERETT WILLIAMS
JUDGE J. ROSS DYER