

**IN THE SUPREME COURT OF TENNESSEE**  
**AT JACKSON, TENNESSEE**

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**JASON L. WHITE,**  
**Appellee**

Case No. W2021-00638-CCA-R10-PC

**Trial Court No. 17-01568**

v.

**STATE OF TENNESSEE,**  
**Appellant**

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**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO**  
**T.R.A.P. 11 OF DENIAL TO TRAP 10 EXTRAORDINARY APPEAL**

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Comes now Jason L White pro-se in filing this Application for Permission to Appeal Pursuant to T.R.A.P. 11 due to the Appellant's denial of the Petitioner's T.R.A.P. 10 Extraordinary Appeal (Jason L White V State of Tennessee W2021-00638-CCA-R10-PC).

On June 9, 2021 the Petitioner filed the T.R.A.P. 10 due to his state and federal constitutional rights being violated by Judge Robert Carter Jr.. In Judge Carter denying the Petitioner his rights to exercise his ability to fully represent himself as a pro se Petitioner (Jason L White v. State of Tennessee W2021-00638-CCA-R10-PC). The Petitioner added numerous letters from elbow counsel, Tennessee Department of Correction (TDOC), and his mother in support of his extraordinary appeal.

On June 28, 2021, the Court of Criminal Appeal filed an Order denying the relief sought in the T.R.A.P. 10 (See Ex. A, Pg. 8-9 Order). On July 6, 2021 Petitioner filed a timely Petition to Rehear Pursuant to Rule 39, to the Court of Criminal Appeals Decision in the T.R.A.P 10 Extraordinary Appeal due to the facts the Court of Criminal Appeal decision (See Exh. C, Pg. 14-17)

On July 14, 2021 the Court of Criminal Appeals denied the Petition to rehear, pursuant to Tenn. App. P. R. 39 for the reasons the Petitioner failed to submit an adequate record for review (See Ex. B, Pg. 11 Order), but then in saying “we conclude that such circumstances are not present in this case” goes against logic if the complete record is not available for the determination of the action on appeal. (See Ex. B, Pg. 11-12 Order).

Appellant states that in pursuant to Tenn. App. P. R. 39(a) (2) “the court’s opinion is in conflict with a statute, poor decision, or other principle of law.” Appellant’s reasons for filing the T.R.A.P. 10 was due to the post-conviction courts denial of Due Process rights guaranteed under the Constitution of the United States to transcripts in order to prepare for his post-conviction hearing. Petitioner pro se states the denial to transcripts of these report dates was entered verbally by the trial court in conducting pre-hearing status conferences with elbow counsel Atkinson.

Petitioner states he is poor and unable to afford the transcripts, but must rely on the court to obtain the transcripts needed to support the claims in the T.R.A.P. 10 Extraordinary Appeal.

On June 28, 2021 the Court of Criminal Appeal’s denial of this extraordinary appeal due to the fact the Petitioner did not attach the transcripts needed to support his

claims in violation of his state and federal constitutional rights by Judge Robert Carter, Jr. The Court of Criminal Appeals acknowledge Tenn. App. P. R. 10 (a) (2) “if necessary for the complete determination of the action on appeal as otherwise provided in these rules. The appellate court may issue whatever Order is necessary to implement review under this rule.” (See Ex. A, Pg. 8-9). In the Court of Criminal Appeals failing to Order the transcripts to determine the allegations in the Petitioner’s extraordinary appeal would be against logic. If anything the Court of Criminal Appeal’s denial would support why the extraordinary appeal should be granted, that without the complete record it is prejudice in the appellate court “concluding that such circumstances are not present in this case.” (See Ex. B, Pg. 11-12 Order).

In the Court of Criminal Appeal pointing out that the Tennessee Supreme Court mandated ruling has made it clear to the lower courts that “due to COVID 19 restrictions the alternative methods of Petitioner’s presence through telephone and videoconferencing as the preferred option over the in person court proceedings.” (Order Modifying Capacity, Distancing, and Facial Coverings Requirements) (ADM2020-00428). These alternative methods were clearly put in place for conducting court business as the “preferred option over in person court proceedings.” (Order Modifying Capacity, Distancing, and Facial Covering Requirements) (Tenn. May 14, 2021). Petitioner states it is clear that the post-conviction court is not respecting the Petitioner’s rights or self-representation rights to exercise his ability to address the court or to fully represent himself as set out in the United States Constitution Amendment 6 and the Tennessee Constitution Article 1, Section 9 “that a person shall enjoy effective assistant of counsel, even if a person has decided to represent himself shall enjoy that same right.”

The Court of Criminal Appeal “notes an indigent post-conviction petitioner is entitled to transcripts prepared at the State’s expense” (See Ex. A, Pg. 9 Order filed June 28, 2021), (See T.C.A. 40-10-312, 40-30-115: see also *Drummer v. State*, 6 S. W. 3d. 520, 522-23 (Tenn. Crim. App. 1999), but failed to grant the extraordinary appeal in part by not ordering the trial court to provide the Petitioner with transcripts in order for the petitioner to properly amend his post-conviction petition. In the Court of Criminal Appeals use of the fact the Petitioner did not attach the transcripts with his T.R.A.P. 10 as reason to deny the extraordinary appeal when the appellate court apparently knows the post-conviction judge is denying the Petitioner any kind of transcripts for any appeal reason. It appears the Court of Criminal Appeal is trying to manipulate in denying the petitioner his right of due process, when in fact the reason for the denial of the extraordinary appeal would be the foundation for the reasons to Order the records for a complete determination of the T.R.A.P. 10 as set out in Tenn. App. P. R. 10 (a) (2), this preserving the Petitioner’s constitutional rights through due process.

A person being denied transcripts in his post-conviction preparation would be unconstitutional. A person who has decided to represent himself being denied his rights to address the court on his own behalf when motions or issues are before the court that could be disputed by the Petitioner pro-se, but allowing the District Attorney’s Office to address these motions and issues would be unconstitutional.

The important question here is “why would the appellate court feel that a person’s rights to effective assistance of counsel even though a self-representation would be so easily disregarded when this is the basic of what our country stands for through the Judicial System.” That if the appellate courts would order the post-conviction judge to

provide transcripts of conducted pre-hearing status conference with elbow counsel from January 27, 2021; March 31, 2021; and May 7, 2021 these report date transcripts of the Shelby County Criminal Court Div. III would clearly show that Judge Robert Carter, Jr. is denying the Petitioner transcripts, entertaining motions without the Petitioner via facetime, via telephone, being personally present, or an evidentiary hearing with elbow counsel.

Petitioner states he would lose “a right or interest that may never be recaptured.” (State v Willoughby, 594 S.W. 2d. 388,392 (Tenn. 1980). That potential error could be avoided by the grant of this extraordinary relief, error that might ultimately cause further delay in the protracted proceedings.

Petitioner prays for the relief sought in this Application for Permission to Appeal Pursuant to T.R.A.P. 11 of Denial to T.R.A.P. 10 Extraordinary Appeal from the Court of Criminal Appeal for the character of reasons in 1.) the need to secure uniformity of reasons; 2.) the need to secure settlement of important questions of law; 3.) the need to secure settlement of questions of public interest; 4.) the need for the exercise of the Supreme Courts supervisory authority.

This appeal is in no way to delay or interfere with the administration of justice, but to preserve the Petitioner’s constitutional rights and to protect what our country stands for as equal protection by our due process

EXHIBIT A- ORDER DENYING T.R.A.P. 10.....PG.8-9

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

FILED

06/28/2021

Clerk of the  
Appellate Courts

**JASON L. WHITE v. STATE OF TENNESSEE**

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

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**No. W2021-00638-CCA-R10-PC**

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**ORDER**

This matter is before the Court upon Appellant Jason L. White's pro se application for extraordinary appeal pursuant to Tennessee Rule of Appellate Procedure 10. On {date}, the Appellant filed a petition for post-conviction relief from his convictions for conspiracy to possess methamphetamine with the intent to sell or deliver in a drug-free zone. The trial court granted the Appellant's request to proceed pro se and appointed attorney Shae Atkinson to act as elbow counsel because the Appellant is currently housed in a prison in New Mexico under Interstate Compact. The Appellant asserts that the trial court has violated his right to proceed pro se and right to due process by refusing to sign an order transporting the Appellant back to Shelby County to appear at various status dates and motion hearings, thereby forcing elbow counsel to "actively participate" and advocate on the Appellant's behalf.

Tennessee Rule of Appellate Procedure 10 provides for an extraordinary appeal "of interlocutory orders of a lower court" where "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). An application for extraordinary review pursuant to Rule 10 must contain "copies of any order or opinion or parts of the record necessary for determination of the application." See Tenn. R. App. P. 10(c). The failure to follow the requirements of the rule will result in the denial of the application for extraordinary review. See generally *State v. Fiveash*, 626 S.W.2d 477 (Tenn. Crim. App. 1981).

As an initial matter, the Appellant has not attached any order from the trial court denying his request to be transported to Shelby County for the purpose of the post-conviction evidentiary hearing or any other scheduled court date. Thus, there is nothing

for this Court to review under the terms of Rule 10.<sup>1</sup> To the extent that the trial court has conducted pre-hearing status conferences with elbow counsel, the Appellant has not established that the trial court “so far departed from the accepted and usual course of judicial proceedings as to require immediate review.” This Court generally does not interfere with the trial court’s management of its docket, and it does not appear that the trial court has held any substantive hearings that would ultimately affect the merits of the Appellant’s post-conviction petition.

Furthermore, given the fact that throughout the pendency of the Appellant’s post-conviction proceedings, the courts of this State have been under a state of emergency due to the COVID-19 pandemic, with the Tennessee Supreme Court periodically suspending in-person court proceedings, *see, e.g., In Re: COVID-19 Pandemic*, No. ADM2020-00428 (Order Extending State of Emergency and Reinstating Suspension of In-Person Court Proceedings) (Tenn. Dec. 22, 2020), an order requiring the Appellant’s physical presence in Shelby County may not have been necessary or prudent. Even with the recent lifting of many of those restrictions, alternative methods of conducting court business, such as telephone and videoconferencing, continue to be “the preferred option over in-person court proceedings.” *Id.* (Order Modifying Capacity, Distancing, and Facial Covering Requirements) (Tenn. May 14, 2021).

Additionally, the Appellant asserts that the trial court has denied his requests for transcripts, forcing his mother to attempt to purchase the trial transcripts piecemeal from the court reporter. Again, the Appellant has not attached any orders reflecting this apparent denial. However, this Court notes that an indigent post-conviction petitioner is entitled to transcripts prepared at the State’s expense. *See* T.C.A. §§ 40-14-312, 40-30-115; *see also Drummer v. State*, 6 S.W.3d 520, 522-23 (Tenn. Crim. App. 1999).

Based on the foregoing, the Appellant’s application for an extraordinary appeal is hereby DENIED. Because it appears that the Appellant is indigent, costs of this appeal are taxed to the State.

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

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<sup>1</sup> Although the Appellant attaches the trial court’s August 28, 2020 order denying his motion to recuse, he acknowledges that any interlocutory appeal therefrom is not timely. *See* Tenn. Sup. Ct. R. 10B, § 2.02 (stating that a petition for recusal appeal must be filed within 21 days of the trial court’s order). Because an extraordinary appeal under Tennessee Rule of Appellate Procedure 10 may not be used to review a judge’s ruling on a recusal motion, *see id.*, Explanatory Cmt., this Court will not consider any of the Appellant’s claims related thereto.

EXHIBIT B: ORDER DENYING TO REHEAR TO T.R.AP. 10.....PG.11-12

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**

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**No. W2021-00638-CCA-R10-PC**

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**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

EXHIBIT C: RETITION TO REHEAR PURSUANT TO RULE 39, TO THE COURT OF  
CRIMINAL APPEALS DECISION IN THE T.R.A.P.10 EXTRAORDINARY APPEAL

.....PG. 14-17

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON, TENNESSEE**

**JASON L WHITE,  
(PETITIONER)**

CCA # W2021-00638-CCA-R10-F  
Shelby County # 17-01568

**V.**

**STATE OF TENNESSEE  
(RESPONDANT)**

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**PETITION TO REHEAR PURSUANT TO RULE 39, TO THE COURT OF  
CRIMINAL APPEALS DECISION IN THE T.R.A.P. 10 EXTRAORDINARY APPEAL**

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Comes now Petitioner Jason L White, Pro-se in filing this Petition to Re-hear, pursuant to Rule 39 of the Tennessee Rules of Appellate Procedures. In accordance with Tenn. App. P. R. 39 (b) a Petition for Rehearing may be filed within ten days after the entry of the judgement. Petitioner request permission to have this honorable court to rehear to the T.R.A.P. 10 Extraordinary Appeal for the following character of reasons to be considered under Tenn. App. P. R 39 (a) (2).

Petitioner filled his Application for Permission to Extraordinary Appeal T.R.A.P. 10 on June 9, 2021 (See Jason L White v. State of Tennessee (W2021-00638-CCA-R10-PC)). The Court of Criminal Appeals entered an Order on June 28, 2021 denying the relief sought in the Petitioner's T.R.A.P. 10.

Petitioner states that in pursuant to Tenn. App. P. R. 39 (a) (2) "the court's opinion is in conflict with a statue, prior decision, or other principle of law." The Petitioner states his reasons for filing the T.R.A.P. 10 was due to the trial courts denial of his Due Process rights guaranteed under the Constitution of the United States to transcripts in order to prepare for his post-

conviction proceedings. Petitioner states in the trial court's denial of transcripts to him he was unable to attach the supporting documents to support his claims in the T.R.A.P. 10 Extraordinary Appeal.

Petitioner states in pursuant to Tenn. App. P. R.10 (a) (2) "if necessary for the complete determination of the action on appeal as otherwise provided in these rules. The appellate court may issue whatever Order is necessary to implement review under this rule." Petitioner states the rulings of the trial court were entered verbally at report dates of record after appointing elbow counsel Atkinson. Petitioner states he did provide reference in the T.R.A.P. 10 Extraordinary Appeal to the dates of the proceedings at which the trial court's rulings were made. In the Petitioner not attaching the copies of the part of the record necessary for the determination of the T.R.A.P. 10 Extraordinary Appeal due to the verbal denial of the trial court in providing the Petitioner the requested Transcripts. Petitioner states he further attached and made reference to elbow counsel Atkinson's letters and emails to support the extraordinary appeal and collaborate that the trial court was verbally addressed on the transcripts and other issues in the T.R.A.P 10.

Petitioner is requesting this court to rehear to the T.R.A.P. 10 Extraordinary Appeal pursuant to Tenn. Crim. P. R. 39 (a) (2) that in this Court's prior ruling in Philip R. Workman v. State of Tennessee (W2001-01920-CCA-R10-PD), which states "that without this part of the record [which are] necessary for [this court's] determination of the application. See Tenn. R. App. P. 10 (c)." This court was unable to reach a determination on the application without the records. On August 10, 2001 it was further "Order" in Workman v. State (W2001-01920-CCA-R10-PD) allowing time for the "parts of the record containing the trial court's ruling which are now challenged by the Petitioner that are necessary for determination of the application"

In this court's Order of denial that states "Additionally, the Applicant asserts that the trial court has denied his request for transcripts, forcing his mother to attempt to purchase the trial transcripts piecemeal from the court reporter. Again, the Appellate has not attached any order reflecting this apparent denial. However, this Court notes that an indigent post-conviction petitioner is entitled to transcripts prepared at the State's expense. See T.C.A. 40-14-312, 40-30-115; see also Drummer v State, 6 S.W.3d 520, 522-23 (Tenn. Crim. App. 1999)."

Further stating. "Because it appears that the Appellant is indigent, costs of this appeal are taxed to the State."

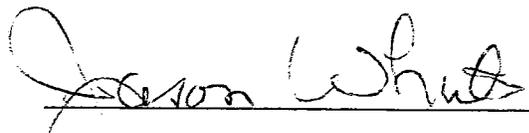
In the Tennessee Supreme Court mandated rulings due to COVID 19 restrictions the alternative methods of Petitioner's presence through telephone and videoconferencing as "the preferred option over the in person court proceeding." (Order Modifying Capacity, Distancing, and Facial Covering Requirements) (ADM2020-00428) (Tenn. May, 2021). Petitioner pro se states he was not allowed to be a part of these report dates via telephone or videoconferencing to address the court on his own behalf and have the opportunity to dispute what is being said in the court room in reference to the claims in the T.R.A.P. 10. This court has deemed the Petitioner indigent, therefore the Petitioner is entitled to the transcripts needed to establish his claims in the T.R.A.P. 10 Extraordinary Appeal.

Petitioner states that in this court's prior ruling in Workman V. State (W2001-01920-CCA-R10-PD) the denial of the Petitioner's T.R.A.P. 10 due to reasons beyond his control would be in conflict with Tenn. Crim. App. P. R. 10 (a) (2) that states "if necessary for complete determination of the action on appeal as otherwise provided in these rules. The appellate court may issue whatever order is necessary to implement review under this rule."

Wherefore, Petitioner respectfully request this honorable court to take into consideration and grant the relief sought in this Petition in Rehearing pursuant to Tenn. Crim. App. P.R. 39 (a) (2) to his Application for Extraordinary Appeal under T.R.A.P. 10. Petitioner moves this honorable court to allow him time to submit the transcripts to support the claims he raises in this T.R.A.P. 10 Extraordinary Appeal that will reflect the trial court's rulings that violated the Petitioner's request through elbow counsel Atkinson's verbal motions. Petitioner files this Petition to Re-hear to the T.R.A.P. 10 Extraordinary Appeal in good faith and only seeks to restore the appearance and reality of fairness in the post-conviction proceedings.

This 30 day of June, 2021.

By:



Jason White, Pro se

### CERTIFICATE OF SERVICE

I, Jason White, Petitioner do hereby certify that a true and correct copy of the above and foregoing was mailed to the following:

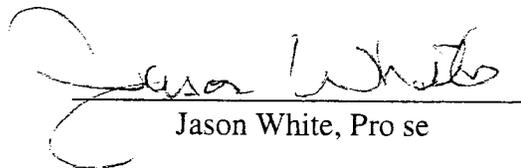
Andrew Coulam

District Attorney General's Office

P.O. Box 20207

Nashville, TN. 372202

This the 30 day of June, 2021.



Jason White, Pro se