

TEXAS COURT OF CRIMINAL APPEALS

In re State of Texas ex rel. John F. Healy, Jr., District Attorney, 268th Judicial District

In re State of Texas ex rel. Healy · No. WR-82,875-01 and WR-82,875-02 · Decided April 6, 2015

SUMMARY

This document is the real party in interest's first and final motion for an extension of time to respond to the State's motion for leave to file petitions for writs of mandamus and/or prohibition. Albert James Turner, through appointed counsel, requests an extension from April 3, 2015, to April 17, 2015, citing counsel's other briefing and capital-case obligations. The matter arises from an original proceeding in the Texas Court of Criminal Appeals concerning competency proceedings in a capital-murder case.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	April 6, 2015
DOCKET	WR-82,875-01 and WR-82,875-02
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding arising from a capital-murder prosecution. The real party in interest moved for an extension of time to respond to the State's motion for leave to file petitions for writs of mandamus and/or prohibition.
PRECEDENTIAL VALUE	No precedential holding is apparent because the document is a motion for extension of time rather than a merits opinion.
PARTIES	State of Texas ex rel. John F. Healy, Jr., District Attorney, 268th Judicial District v. Albert James Turner, real party in interest

TOPICS

[appellate procedure](#)[criminal procedure](#)[sentencing](#)

PRACTICE AREAS

[criminal procedure](#)[appellate procedure](#)[capital punishment](#)[competency to stand trial](#)

QUESTIONS PRESENTED

1. Whether the real party in interest should receive an extension of time, until April 17, 2015, to respond to the State's motion for leave to file petitions for writs of mandamus and/or prohibition.

FACTUAL BACKGROUND

In May 2011, a jury convicted Albert James Turner of capital murder and the trial court imposed the death penalty after the jury answered the statutory special issues. Following an abatement and remand by the Texas Court of Criminal Appeals, the trial court determined that a retrospective competency trial was feasible and initially scheduled one. The trial court later chose instead to hold a jury trial on Turner's current competency.

PROCEDURAL HISTORY

A jury convicted Albert James Turner of capital murder in May 2011 and assessed death punishment after answering the Texas capital-sentencing special issues. The Texas Court of Criminal Appeals abated the direct appeal and remanded for consideration and, if feasible, conduct of a retrospective competency trial. After the trial court determined feasibility and scheduled a retrospective competency trial, it instead decided to conduct a jury trial concerning Turner's current competency. The State then sought leave to file petitions for writs of mandamus and/or prohibition, and Turner requested additional time to respond.

DISPOSITION

other

CASES CITED

- Turner v. State, 422 S.W.3d 676 (Tex. Crim. App. 2013)
- Kimberly Saenz v. State of Texas, Cause No. 04-12-00238-CR
- State of Texas v. Marcelino Osuna, Cause No. 1414477
- Harlem Harold Lewis III v. State of Texas, No. AP-77-045

OPINION

PER CURIAM.

WR-82,875-01,02 COURT OF CRIMINAL APPEALS AUSTIN, TEXAS Transmitted 4/3/2015 12:38:04 PM Accepted 4/6/2015 8:30:54 AM ABEL ACOSTA NOS. WR-82,875-01 and WR-82,875-02 CLERK IN THE COURT OF CRIMINAL APPEALS RECEIVED COURT OF CRIMINAL APPEALS 4/6/2015 FOR THE STATE OF TEXAS ABEL ACOSTA, CLERK * * * In re STATE OF TEXAS ex rel. JOHN F. HEALY, JR., District Attorney, 268TH JUDICIAL DISTRICT, Relator * * * THE REAL PARTY IN INTEREST'S FIRST AND FINAL MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE REAL PARTY IN INTEREST'S RESPONSE TO THE STATE'S MOTION FOR LEAVE TO FILE PETITION FOR WRITS OF MANDAMUS AND/OR PROHIBITION *Death Penalty Case* ORIGINAL PROCEEDING

FROM CAUSE NO. 10-DCR-054233 IN THE 268TH DISTRICT COURT, FORT BEND COUNTY THE HONORABLE BRADY ELLIOTT, PRESIDING JUDGE TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS: ALBERT JAMES TURNER, the real party in interest, in the above cause, respectfully requests that the Court grant this Motion for Extension of Time Within Which to File Real Party in Interest's Response to the State's Motion for Leave to File Petition for Writs of Mandamus and/or Prohibition.

In support of this motion, Mr. Turner respectfully shows the Court the following: I. In May 2011, a jury convicted Albert James Turner of capital murder and answered the special issues submitted pursuant to Texas Code of Criminal Procedure article 37.071, and the trial court, accordingly, set punishment at death. This Court abated Turner's direct appeal and remanded the cause to the trial court to determine whether it is feasible to conduct a retrospective competency trial, and if so, to conduct a retrospective competency trial.

Turner v. State, 422 S.W.3d 676 (Tex. Crim. App. 2013). II. After the trial court determined feasibility and scheduled a retrospective competency trial, the trial court later decided instead to hold a jury trial on Turner's current competency. Relator then filed the instant Motion for Leave to File Petition for Writs of Mandamus and/or Prohibition. Relator also filed the petition for which it is requesting leave to 2 file.

III. The real party in interest's response is currently due on April 3, 2015. Counsel respectfully requests an extension of time until Friday, April 17, 2015. IV. Counsel just completed supplemental briefing to the 4th Court of Appeals in Kimberly Saenz v. State of Texas Cause No. 04-12-00238-CR by April 8, 2015, a non-death capital that this Court remanded.

Additionally, Counsel is preparing for State of Texas v. Marcelino Osuna Cause No. 1414477, a non-death capital scheduled for trial on May 18, 2015. Counsel is continuing to work on the death capital appeal of Harlem Harold Lewis III v. State of Texas, No. AP-77-045, due to this Court on June 8, 2015.

V. WHEREFORE, PREMISES CONSIDERED, Mr. Turner prays that this Honorable Court will grant this requested extension of time to file the Real Party in Interest's Brief in the above cause and extend the time for filing until Friday, April 17, 2015. This request is not made for any 3 purposes of delay, but only so that Mr. Turner may receive the effective assistance of counsel to which he is entitled.

Respectfully submitted, /s/ Robert A. Morrow _____ ROBERT A. MORROW State Bar No. 14542600 24 Waterway Ave., Suite 660 The Woodlands, Texas 77380 Telephone: (281) 379-6901 ramorrow15@gmail.com /s/ Amy Martin _____ AMY MARTIN State Bar No. 24041402 202 Travis Street, Suite 300 Houston, Texas 77002 Telephone: (281) 809-0873 amymartinlaw@gmail.com ATTORNEYS FOR REAL PARTY IN

INTEREST APPOINTED ON APPEAL ONLY 4 CERTIFICATE OF SERVICE I certify that I have served this document, Real Party in Interest's Response to the State's Motion for Leave to File Petition for Writs of Mandamus and/or Prohibition, on the following parties on April 3, 2015 via fax and/or email: Real Party in Interest The State of Texas John F. Healy, Jr. State Bar No. 09328300 Fort Bend County District Attorney Fred Felcman State Bar No. 06881500 Fred.Felcman@fortbendcountytexas.gov Assistant Criminal District Attorney Gail Kikawa McConnell State Bar No. 11395400 Gail.McConnell@fortbendcountytexas.gov Assistant Criminal District Attorney 1422 Eugene Heimann Circle Richmond, Texas 77469 (281) 341-4460 /(281) 238-3340 (fax) Respondent The Honorable Brady Elliott Trial Court Judge 368th Judicial District Court of Fort Bend County 1422 Eugene Heimann Circle Richmond, Texas 77469 Telephone: 281-341-8610 Fax: 281-341-8614 /s/ Robert A. Morrow _____ ROBERT A. MORROW