

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Eric W. Lewis v. Kurt W. Hall and David E. Godwin

825 S.E.2d 115 (W. Va. 2019) · No. No. 18-0337 · Decided March 8, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia denied Eric W. Lewis’s petition for a writ of prohibition seeking to disqualify the trial judge and prevent the prosecutor from calling the circuit court clerk as a witness in a failure-to-appear prosecution. The court held that the issue concerning the clerk’s testimony was not preserved below and that there is no per se disqualification of a presiding judge when the clerk of court testifies for the prosecution.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Jenkins
JURISDICTION	West Virginia
DECIDED	March 8, 2019
DOCKET	No. 18-0337
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for a writ of prohibition under the Supreme Court of Appeals of West Virginia's original jurisdiction challenging the denial of a motion to recuse the trial judge and alternatively seeking to prohibit the prosecutor from calling the circuit court clerk as a witness.
STANDARD OF REVIEW	A writ of prohibition issues only in clear cases where the inferior tribunal is proceeding without jurisdiction or in excess of its legitimate powers. For nonjurisdictional claims that a lower tribunal exceeded its legitimate powers, the court considers the five Hoover factors, giving substantial weight to whether the lower court committed clear legal error. A party may challenge a trial court's ruling on judicial disqualification by prohibition.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	State of West Virginia ex rel. Eric W. Lewis v. The Honorable Kurt W. Hall, David E. Godwin

TOPICS

appellate procedure preservation of error criminal procedure evidence

PRACTICE AREAS

criminal procedure appellate procedure judicial disqualification evidence

QUESTIONS PRESENTED

1. Whether the prosecutor should be prohibited from calling the circuit court clerk as a witness when that issue was not raised before the trial court.
2. Whether a presiding trial judge is disqualified merely because the court clerk will testify for the prosecution in a criminal trial.

HOLDINGS

1. The petitioner was not entitled to a writ of prohibition on this issue because he did not raise the issue before the trial court, and the Supreme Court will not decide a nonjurisdictional question that the trial court did not decide in the first instance.
2. There is no per se disqualification of a presiding judge when the clerk of court is called to testify for the prosecution's case-in-chief.

KEY QUOTATIONS

“We therefore hold that there is no per se disqualification of a presiding judge when the Clerk of Court is called to testify for the Prosecution’s case-in-chief.” (11)

“In view of the foregoing, the writ of prohibition prayed for by Mr. Lewis is denied.” (12)

FACTUAL BACKGROUND

An Upshur County grand jury indicted Eric W. Lewis for failure to appear at a pretrial hearing in an earlier felony case. The prosecutor intended to call the circuit clerk to authenticate records and testify about Lewis's bond and prior court appearances. Lewis moved to recuse Judge Hall, arguing that the clerk's status as an officer of the court would prejudice the jury by making it appear that the court supported the prosecution. Judge Hall denied recusal and stayed the trial pending Lewis's prohibition petition.

PROCEDURAL HISTORY

An Upshur County grand jury indicted Lewis for felony failure to appear. The circuit court quashed a subpoena directed to Lewis's former attorney but denied Lewis's amended motion to recuse Judge Hall based on the prosecutor's intended call of the circuit clerk as a witness. The circuit court stayed the criminal trial so Lewis could seek extraordinary relief. The Supreme Court of Appeals denied the writ.

DISPOSITION

CASES CITED

- State ex rel. Vineyard v. O'Brien, 100 W. Va. 163, 130 S.E. 111 (1925)
- State ex rel. Peacher v. Sencindiver, 160 W. Va. 314, 233 S.E.2d 425 (1977)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- State v. Browning, 199 W. Va. 417, 485 S.E.2d 1 (1997)
- Hanlon v. Logan County Board of Education, 201 W. Va. 305, 496 S.E.2d 447 (1997)
- Sands v. Security Trust Co., 143 W. Va. 522, 102 S.E.2d 733 (1958)
- Duquesne Light Co. v. State Tax Department, 174 W. Va. 506, 327 S.E.2d 683 (1984)
- Cameron v. Cameron, 105 W. Va. 621, 143 S.E. 349 (1928)
- Whitlow v. Board of Education of Kanawha County, 190 W. Va. 223, 438 S.E.2d 15 (1993)
- State ex rel. Allstate Insurance Co. v. Gaughan, 203 W. Va. 358, 508 S.E.2d 75 (1998)
- State ex rel. Ogden Newspapers, Inc. v. Wilkes, 198 W. Va. 587, 482 S.E.2d 204 (1996)
- State ex rel. Blackhawk Enterprises, Inc. v. Bloom, 219 W. Va. 333, 633 S.E.2d 278 (2006)
- State ex rel. Blake v. Hatcher, 218 W. Va. 407, 624 S.E.2d 844 (2005)
- Cureton v. State, No. 07-17-00410-CR, 2018 WL 3736177 (Tex. App. Aug. 6, 2018)
- Reese v. State, 2018 Ark. App. 336, 552 S.W.3d 47 (2018)
- Bell v. State, 108 So. 3d 639 (Fla. 2013)
- State v. Lasley, 130 S.W.3d 15 (Mo. Ct. App. 2004)
- State v. Weathers, 339 N.C. 441, 451 S.E.2d 266 (1994)
- State v. Osborne, No. M2010-02281-CCA-R3-CD, 2012 WL 1657047 (Tenn. Crim. App. May 9, 2012)
- Black v. State, 362 S.W.3d 626 (Tex. Crim. App. 2012)
- Gillard v. Commonwealth, No. 0037-02-2, 2003 WL 21962513 (Va. Ct. App. Aug. 19, 2003)
- State v. Hart, 195 Wash. App. 449, 381 P.3d 142 (2016)
- State v. McCraime, 214 W. Va. 188, 588 S.E.2d 177 (2003)
- State v. Herbert, 234 W. Va. 576, 767 S.E.2d 471 (2014)
- Trussell v. State, No. 1D16-3763, 2018 WL 4042629 (Fla. Dist. Ct. App. Aug. 24, 2018)
- Mann v. State, 754 N.E.2d 544 (Ind. Ct. App. 2001)
- State v. Waycaster, No. COA17-1249, 2018 WL 3732956 (N.C. Ct. App. Aug. 7, 2018)
- Terrazas v. Slagle, 142 F.R.D. 136 (W.D. Tex. 1992)
- Kennedy v. Great Atlantic & Pacific Tea Co., 551 F.2d 593 (5th Cir. 1977)