

No. WR-50,961-10

IN THE TEXAS COURT OF CRIMINAL APPEALS RECEIVED
COURT OF CRIMINAL APPEALS
11/22/2019
DEANA WILLIAMSON, CLERK

Ex Parte Rodney Reed,
Applicant

SUGGESTION OF REHEARING

BAKER BOTTS L.L.P.
Scott D. Powers
State Bar No. 24027746
Delaney J. McMullan
State Bar No. 24106287
98 San Jacinto Blvd.
Suite 1500
Austin, Texas 78701
512.322.2500 telephone
512.322.2501 facsimile

THE INNOCENCE PROJECT
Bryce Benjet
State Bar No. 24006829
40 Worth St.
Suite 701
New York, New York
10013
212.364.5340 telephone
212.364.5341 facsimile

LEVATINO PACE PLLC
Andrew F. MacRae
State Bar No. 00784510
1101 S. Capital of Texas
Highway
Building K, Suite 125
Austin, Texas 78746
512.637.8563 telephone
512.637.1583 facsimile

ATTORNEYS FOR RODNEY REED

INTRODUCTION

At the time of the Court's Order on Rodney Reed's habeas application, the Honorable Doug Shaver had resigned and chosen to discontinue his assignment in this case. In light of this information reflected in correspondence between Judge Shaver and Chief Justice Hecht, *see* Exhibit 1, and in the Honorable 21st District Judge Carson Campbell's response filed with this Court, Mr. Reed respectfully suggests that the Court grant a limited rehearing on its own initiative¹ so that the Court may excise the following language from its order: "If Judge Shaver chooses to discontinue his assignment in this case, then the regional presiding judge, the Hon. Olen Underwood, shall appoint or otherwise determine who is assigned to this case." Order at 4, *Ex Parte Rodney Reed, Applicant*, No. WR-50,961-10 (Tex. Crim. App. Nov. 15, 2019).

There is a constitutionally-based and straightforward presumption that the duly-elected district court judge has both the authority and obligation to resolve matters in his district court. *See Oncor Elec. Delivery Co. LLC v. Chaparral Energy, LLC*, 546 S.W.3d 133, 138 (Tex. 2018). The 2014 assignment order, when made, divested Judge Towslee-Corbett of authority because of her recusal. Judge Carson Campbell has since been elected District Judge for the 21st District and holds authority to preside over the proceedings on remand.

¹ *See* Tex R. App. P. 79.2(d).

I. The CCA Should Presume that Judge Carson Campbell Will Preside.

The Court should presume that the regularly elected judge in whose court the case is pending will preside.² While the presiding judge of the administrative region and the Chief Justice of the Texas Supreme Court possess some authority to assign a case to a judge other than the elected district judge, Tex. Gov't Code § 74.056, that authority may only be exercised in a limited set of circumstances. *See id.* §§ 24.002, 74.052.

A presiding judge is authorized to assign another judge to sit in a case from which the district judge is disqualified or recused. Tex. Gov't Code § 24.002. And more generally, chapter 74 of the Tex. Gov't Code provides that “Judges may be assigned in the manner provided by this chapter to hold court when necessary to dispose of accumulated business in the region.” *Id.* § 74.052.

Here, neither circumstance justifying the assignment of this case to a judge other than the duly-elected District Judge Campbell has been determined to exist by a judge authorized to do so. In fact, Judge Campbell has expressed his willingness to serve and had issued a notice of hearing prior to this Court's order staying that proceeding. *See Exhibit 2 (Notice of Hearing, No. 8701, State of Texas*

² Tex. R. Civ. P. 18 underscores the presumption that when a judge resigns or is no longer able to serve, the succeeding, elected judge is to preside over the former judge's cases. The presiding judge of the administrative region plays no role in the succession of the elected judge in presiding over cases filed in his or her court.

v. Rodney Reed (21st Dist. Ct., Bastrop County, Tex. Nov. 6, 2019)). This Court should therefore presume that Judge Campbell will preside.

II. Authority to Resolve the Claims on Remand Lies With Judge Carson Campbell.

Nothing in the presiding judge's 2014 assignment order divests Judge Campbell of authority to hear the case and consider the claims on remand. *See* Exhibit 3 (Order of Assignment by the Presiding Judge, Assignment #25737 (May 28, 2014)). Presiding Judge Underwood assigned Judge Shaver to the case because then-District Judge Reva Towslee-Corbett recused herself from the case. *See* Exhibit 4 (Order of Voluntary Recusal, No. 8701, *State of Texas v. Rodney Reed* (21st Dist. Ct., Bastrop County, Tex. May 23, 2014)); Tex. Gov't Code § 24.002. Judge Carson Campbell has since been elected as the District Judge of District 21.

The assignment order that allowed Judge Shaver to preside over Mr. Reed's case was limited:

This assignment begins the 28th day of May, 2014 and is for the primary purpose of hearing cases and disposing of any accumulated business requested by the court.

The assignment shall continue as may be necessary for the assigned Judge to dispose of any accumulated business and to complete trial of any case or cases begun during this assignment, and to pass on motions for new trial and all other matters growing out of accumulated business or cases heard before the Judge herein assigned, or until terminated by the Presiding Judge.

Exhibit 3. Significantly, the assignment order did not specify that Judge Shaver was to be assigned to *State of Texas vs. Rodney Reed* specifically, nor did it grant Judge Shaver exclusive authority over this case. Compare Exhibit 3, with Exhibit 5 (Order of Assignment by the Presiding Judge, Assignment #25592 (April 29, 2014) (assigning Judge Billy Ray Stubblefield to hear Motion to Recuse the Honorable Reva Towslee-Corbett, pending in Cause Number 8701; *State of Texas vs. Rodney Reed*)).

An assignment order that does not assign a visiting judge to a specific case or grant the visiting judge exclusive authority over the case does not divest the elected district judge of authority in a case over which a visiting judge has presided.³ See *Davis v. Crist Indus., Inc.*, 98 S.W.3d 338, 341 (Tex. App.—Fort Worth 2003, pet. denied) (“Contrary to Davis's contention, however, [the visiting judge] did not have ‘exclusive’ authority or ‘jurisdiction’ to try the case. Under the Texas Constitution and the rules of civil procedure, more than one judge may exercise authority over a single case. Absent language in [the presiding judge’s] assignment

³ The parties agree that as a result of her recusal, Judge Towslee-Corbett was divested of her authority over this case. See Tex. Gov’t Code § 24.002; Tex. R. Civ. Proc. § 18a. However, that divestiture has no effect on the authority of district judge elected after the assignment order was made. See *Ex parte Thuesen*, 546 S.W.3d 145, 152 (Tex. Crim. App. 2017) (“[O]nce a district judge signs an order recusing [] herself under the statute, *the recused judge* no longer has any judicial authority to take any action or sign any orders in the case.”). Regardless of Judge Towslee-Corbett’s recusal and Judge Shaver’s resulting assignment, Judge Campbell holds full authority to hear the claims on remand.

order specifically assigning him to the case, [the district judge] had the authority to complete the trial of the case in [the visiting judge's] absence. The terms of [the presiding judge's] order did not preclude [the district judge] from exercising authority over the case when expedient.”); *see also Sholars v. State*, No. 14-02-00138-CR, 2003 WL 21229544, at *2 (Tex. App.—Houston [14th Dist.] May 29, 2003, no pet. h.) (“Although the assignment order described by appellant might have given [the visiting judge] the authority to proceed with adjudication of guilt and sentencing, such an order would not have given [the visiting judge] exclusive authority and would not have deprived [the district judge] of his authority to proceed in this case.”); *Schneider v. Acousti Eng'g Co. of Fla.*, No. 01-92-00921-CV, 1993 WL 415481, at *2 (Tex. App.—Houston [1st Dist.] Oct. 14, 1993, no pet. h.) (“We disagree with Schneider's unsupported proposition that an order of limited assignment divests a district judge of jurisdiction over cases filed in his own court and gives exclusive jurisdiction to a visiting judge.”). Therefore, Judge Campbell is authorized to preside over the case on remand as the elected 21st District Court Judge.

CONCLUSION

For these reasons, Mr. Reed respectfully requests that the Court amend its November 15 Order to remove the order that “If Judge Shaver chooses to

discontinue his assignment in this case, then the regional presiding judge, the Hon. Olen Underwood, shall appoint or otherwise determine who is assigned to this case.”

Dated: November 21, 2019

Respectfully submitted,

By: /s/ Bryce Benjet

THE INNOCENCE PROJECT

Bryce Benjet
State Bar No. 24006829
40 Worth St.
Suite 701
New York, New York 10013
212.364.5340 telephone
212.364.5341 facsimile

BAKER BOTTS L.L.P.

Scott D. Powers
State Bar No. 24027746
Delaney J. McMullan
State Bar No. 24106287
98 San Jacinto Blvd.
Suite 1500
Austin, Texas 78701
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Andrew F. MacRae
State Bar No. 00784510
1101 S. Capital of Texas Highway
Building K, Suite 125
Austin, Texas 78746
512.637.8563 telephone
512.637.1583 facsimile

ATTORNEYS FOR RODNEY REED

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2019 a true and correct copy of the foregoing was served electronically through the court's CM/ECF system on the following counsel of record:

Matthew Ottoway
Assistant Attorney General
Matthew.Ottoway@oag.texas.gov
P.O. Box 12548
Capitol Station
Austin, Texas 78711

Brian Goertz
Bastrop County District Attorney
804 Pecan Street
Bastrop, Texas 78602

/s/ Bryce Benjet _____

EXHIBIT 1

August 9, 2019

Hon. Blake A. Hawthorne
Clerk, Supreme Court of Texas
201 W. 14th Street
Austin, Texas 78711

RECEIVED
IN SUPREME COURT
OF TEXAS
AUG 15 2019
BLAKE HAWTHORNE, Clerk
BY _____ Deputy

Dear Mr. Hawthorne:

Please remove my name from the list of judges who receive assignments,
as I am retiring.

Thank you,



Doug Shaver
Retired Judge 262 District Court
Bar #18136000

Received by General Counsel

08/15/2019



The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

JUSTICES
PAUL W. GREEN
EVA M. GUZMAN
DEBRA H. LEHRMANN
JEFFREY S. BOYD
JOHN P. DEVINE
JEFFREY V. BROWN
JAMES D. BLACKLOCK
J. BRETT BUSBY

CLERK
BLAKE A. HAWTHORNE

GENERAL COUNSEL
NINA HESS HSU

EXECUTIVE ASSISTANT
NADINE SCHNEIDER

PUBLIC INFORMATION OFFICER
OSLER McCARTHY

August 19, 2019

The Honorable Doug Shaver
Senior District Judge of the 262nd District Court

via regular mail

Dear Judge Shaver:

I am in receipt of your letter dated August 9, 2019, notifying the Court of your need to discontinue further assignments and to change your eligibility status as a visiting judge.

Doug, thank you for serving the Texas judiciary and the people of Texas for so many years.

Best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written in a cursive style.

Nathan L. Hecht
Chief Justice

c: Hon. Billy Ray Stubblefield, Presiding Judge, 3rd AJR
Angela Garcia, Office of Court Administration
Comptroller's Office/Judiciary Division

via email
via email
via email

EXHIBIT 2

Andrea Partida
Criminal Court Coordinator
(512) 581-7137
(512) 581-4038



Deborah Shirocky
Civil Court Coordinator
(512) 581-4037
(512) 581-4038

21st, 335th, 423rd Judicial District Courts for Bastrop County, Texas
804 Pecan Street
Bastrop, Texas 78602

NOTICE OF HEARING

DATE: November 6, 2019

TO: Andrew F. MacRae, Attorney at Law (512) 637-1583 and U.S. Mail
Bryce Benjet, Attorney at Law, via U.S. Mail
Matthew Ottoway, Assistant Attorney General (512) 320-8132 and U.S. Mail
Bryan Goertz, District Attorney, Hand Delivered
Sarah Loucks, Bastrop County District Clerk, Hand Delivered

RE: Cause No.8701 The State of Texas vs. Rodney Reed; In the 21st Judicial District Court of Bastrop County, Texas

Please be Advised:

The above entitled and numbered cause has been set for a Hearing on **Wednesday, November 13, 2019 @ 1:30 p.m.** in Bastrop, Texas.

The hearing will take place at the Bastrop County Law Enforcement Center District Courtroom, 200 Jackson Street, Bastrop, Texas.

The Honorable Carson Campbell will be presiding.

Respectfully,


Andrea R. Partida

Filed  m

NOV 06 2019

Sarah Loucks
District Clerk, Bastrop County

EXHIBIT 3

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THE STATE OF TEXAS

SECOND ADMINISTRATIVE JUDICIAL REGION



ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE

Pursuant to Section 74.056, Texas Government Code, I hereby assign the Honorable Doug Shaver, Senior Judge, 262nd Judicial District Court, to the 21st Judicial District Court of Bastrop County, Texas.

This assignment begins the 28th day of May, 2014 and is for the primary purpose of hearing cases and disposing of any accumulated business requested by the court.

This assignment shall continue as may be necessary for the assigned Judge to dispose of any accumulated business and to complete trial of any case or cases begun during this assignment, and to pass on motions for new trial and all other matters growing out of accumulated business or cases heard before the Judge herein assigned, or until terminated by the Presiding Judge.

It is ordered that the Clerk of the Court to which this assignment is made, if it is reasonable and practicable, and if time permits, give notice of this assignment to each attorney representing a party to a case that is to be heard in whole or in part by the assigned Judge.

It is further ordered that the Clerk, upon receipt hereof, shall post a copy of this order in a prominent place in the public area of the Clerk's office. This posting shall constitute "Notice of Assignment" as required by Section 74.053, Texas Government Code.

Ordered this 28th of May, 2014.

Olen Underwood

Olen Underwood, Presiding Judge
Second Administrative Judicial Region

Attest:

Rebecca Britte

Rebecca Britte
Administrative Assistant

Assignment # 25737

FILED 12:00 PM
DATE 5/28/2014
SARAH L. LUCKS
District Clerk, Bastrop County

66

67



Second Administrative Judicial Region of Texas

Olen Underwood
Presiding Judge

Melanie Sipes
Administrative Assistant

Rebecca Brite
Administrative Assistant

May 28, 2014

Honorable Doug Shaver

Dear Judge Shaver:

Enclosed please find assignment #25737 for the 21st Judicial District Court of Bastrop County to hear Cause No. 8701; State of Texas vs. Rodney Reed and to dispose of any other business requested by the court.

Compensation for this assignment has been authorized not to exceed 1 day(s).

If the case or cases you are hearing under this assignment extend beyond the authorized time for compensation you must obtain an extension of time in order to receive compensation for anything beyond that period. Please note you will receive an extension of time for compensation only, not a new assignment. Also note an extension is not automatic but will be granted only if there are sufficient funds available.

Please be aware that claims must be submitted on the enclosed salary form and returned to my attention no more than 30 days following the conclusion of your assignment. (The Comptroller has requested a strict time frame)

If you have any questions feel free to call.

Sincerely,

Rebecca Brite
Enclosure(s)

FILED 12 PM
DATE 5/28/2014
Sara L. ...
District Clerk, Bastrop County

67

EXHIBIT 4

No. 8701

The State of Texas

§

In the District Court

§

Vs

§

Of Bastrop County, TX

Rodney Reed

§

§

21st Judicial District

ORDER OF VOLUNTARY RECUSAL

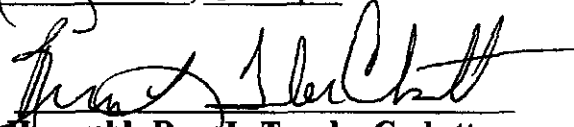
On May 23, 2014, the court considered the Motion to Recuse filed by Bryce Benjet, attorney for movant, in the above captioned cause.

Having considered the motion, the Court **FINDS** the allegations contained in the motion do not support recusal. The Court does not harbor any personal bias or prejudice against the movant nor does the Court lack impartiality. The Court remains able to base its decision on the facts as they develop at trial, and to render a fair judgment in this case.

While the Court is qualified to participate in this case, the Court finds the interest of judicial economy along with the appearance of propriety dictate the Court sua sponte recuse itself from any further proceedings in this case.

So that all parties in this case will have confidence in a fair and impartial tribunal, the Court asks that the Presiding Judge of the Second Administrative Region assign a judge to preside over this case.

Signed the 23rd day of May, 2014.


Honorable Reva L. Towslee Corbett
Judge Presiding

FILED 2 PM
DATE 5/28/2014
Sarah Loucks
District Clerk, Bastrop County

EXHIBIT 5



Second Administrative Judicial Region of Texas

Olen Underwood
Presiding Judge

Melanie Sipes
Administrative Assistant

Rebecca Britte
Administrative Assistant

April 29, 2014

Bryce Benjet
VIA US MAIL

Andrew F. McRae
VIA FACSIMILE
Fax: 512-637-1583

Matthew Ottoway
VIA FACSIMILE
Fax : 512-320-8132

NOTICE OF HEARING ASSIGNMENT

TO ALL ATTORNEYS / PARTIES PRO SE OF RECORD:

The Honorable Billy Ray Stubblefield, Active Judge, 26th Judicial District Court, has been assigned to hear Motion to Recuse in Cause No. 8701; State of Texas vs. Rodney Reed; 21st Judicial District Court of Bastrop County, Texas.

Ccs: Bastrop District Clerk

21st Judicial District Court

THE STATE OF TEXAS

SECOND ADMINISTRATIVE JUDICIAL REGION

ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE

Pursuant to Rule 18a, Texas Rules of Civil Procedure, I hereby assign the Honorable **Billy Ray Stubblefield**, Active Judge of the 26th Judicial District Court, Presiding Judge of the Third Administrative Judicial Region, to the 21st Judicial District Court of Bastrop County, Texas.

This assignment begins the 1st day of May, 2014 and is for the primary purpose of the assigned Judge to hear Motion to Recuse the Honorable Reva Towslee-Corbett, **pending in Cause Number 8701; State of Texas vs. Rodney Reed**; and to hear cases and dispose of any accumulated business requested by the court.

This assignment shall continue as may be necessary for the assigned Judge to dispose of any accumulated business and to complete trial of any case or cases begun during this assignment, and to pass on motions for new trial and all other matters growing out of accumulated business or cases heard before the Judge herein assigned, or until terminated by the Presiding Judge.

It is ordered that the Clerk of the Court to which this assignment is made, if it is reasonable and practicable, and if time permits, give notice of this assignment to each attorney representing a party to a case that is to be heard in whole or in part by the assigned Judge.

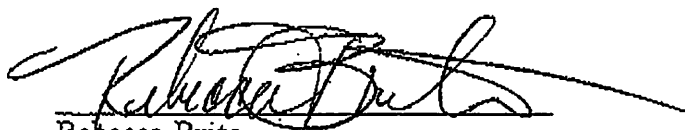
It is further ordered that the Clerk, upon receipt hereof, shall post a copy of this order in a prominent place in the public area of the Clerk's office. This posting shall constitute "Notice of Assignment" as required by Section 74.053, Texas Government Code.

Ordered this 29th of April, 2014.



Olen Underwood, Presiding Judge
Second Administrative Judicial Region

Attest:



Rebecca Brite
Administrative Assistant

Assignment # 25592