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IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

EX PARTE KEVIN DALE SHEFFIELD,

Appeal from the 413th District Court of Johnson County, Texas
Trial Cause No. DC-F201900865-1
7th Court of Appeals
No. 07-20-00216-CR

APPELLANT'S BRIEF

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CERTIFICATE OF INTERESTED PARTIES

The undersigned, counsel of record for KEVIN DALE SHEFFIELD, certifies that the following listed parties have an interest in the outcome of this case.

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TABLE OF ABBREVIATIONS

For clarity, the following abbreviations will be used in this Brief:

Appellant/Defendant/Sheffield .....KEVIN DALE SHEFFIELD

Appellee/State ..... The State of Texas

CR followed by a page number refers to that page number of Clerk's Record on file in this Appeal.

RR followed by a volume and page number refers to that volume number and page number of the Reporter's Record on file in this Appeal.

STATEMENT REGARDING ORAL ARGUMENT

The Court did not grant oral argument.

TABLE OF AUTHORITIES

Texas State Cases

Ex parte Sheffield, 611 S.W.3d 630, 635 (Tex. App.—Amarillo 2020) .....viii, xi

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STATEMENT OF THE CASE

Sheffield was indicted for the offenses of Possession of a Controlled Substance 4-200 Grams with Intent to Deliver, Evading Arrest or Detention in a Vehicle, and Unlawful Possession of a Firearm by a Felon on May 12, 2021.[1] He was held continuously in jail since on or about August 5, 2019 for his charges, and his bond was set at $100,000.[2] Sheffield, through standby counsel, filed his Application for Writ of Habeas Corpus to Order Release Because of Delay on June 29, 2020.[3] On June 30, 2020, the trial court held a hearing on Sheffield's Application, which the trial court denied.[4] The court of appeals reversed and remanded the case to the trial court. *Ex parte Sheffield*, 611 S.W.3d 630, 635 (Tex. App.—Amarillo 2020). It denied the State Prosecuting Attorney's argument on rehearing. The State filed a Petition for Discretionary Review which the Court of Appeals granted on grounds (2) and (3) of the State's petition. The Court of Appeals further granted review on its own motion.

[1] C.R. Vol. 1, pp. 14-15.
[2] R.R. Vol. 7, p. 5
[3] C.R. Vol. 1, pp. 6-8.
[4] *Id.*at 9.

STATEMENT OF FACTS

Sheffield was held in custody continuously beginning August 5, 2019, waiting for a jury trial in his case.[5] In his Pre-Trial Scheduling Order, his trial was to be set after his trial docket on January 23, 2020.[6] On January 7, 2020, he filed a Motion for Speedy Trial.[7] On May 27, 2020, he filed his Motion for Release Because of Delay.[8]

At that hearing, Sheffield, who was representing himself, stated that he was indigent, which went unchallenged.[9] At the hearing, the trial judge indicated that the State and the judge would like to have a trial in Sheffield's case, but due to COVID-19 restrictions, the court was not allowed to proceed to a jury trial.[10] Sheffield argued that because the State could not proceed to trial, he should be released on a personal recognizance bond or given a reduced bond, but the trial court denied the motion.[11] On June 15, 2020, Sheffield filed a request for a Speedy Trial again.[12]

[5] R.R. Vol. 7, p. 5.
[6] Supp. C.R. p. 16.
[7] Id. at 17.
[8] Id. at 21.
[9] R.R. Vol. 6, pp. 5-6.
[10] Id. at 6-7.
[11] Id. at 5-6.
[12] Id. at 24.

On June 29, 2020, Sheffield's standby counsel filed an Application for Writ of Habeas Corpus at Sheffield's request.[13] In the Application, Sheffield asserted that he was requesting a P.R. bond or a reduced bond, and re-urging his request for a Speedy Trial.[14] He argued that his liberty is being restrained in violation of Texas Constitution Article 1, Sections 10, 13, 15, and 19, under the United States Constitution Amendments 5, 6, 8, and 14, and under Texas Code of Criminal Procedure Articles 17.15 and 17.151.[15] At this hearing, standby counsel at Sheffield's request represented him and argued that Sheffield would like to have a jury trial, that he was ready for jury trial, and that he was indigent and could not make bond in this case and would like a PR bond or a reduced bond.[16] The prosecutor did not contest any of the factual assertions and specifically mentioned that he did not disagree with them.[17] He indicated that the State is also ready for a jury trial but cannot proceed because of an order restricting jury trials due to COVID-19.[18] The State opposed the request for a P.R. bond or a bond reduction, and the trial judge denied the Application in its entirety.[19]

[13] C.R. Vol. 1, pp. 6-8.

[14] C.R. Vol. 1, pp. 6-7.
[15] Id. at 7.
[16] R.R. Vol. 7., pp. 5-6.
[17] Id. at 6.
[18] Id. at 6-7.
[19] Id. at 7-9.

x

Sheffield appealed the denial of his pretrial habeas writ. The court of appeals upheld the trial court on "the bail/bond issues." *Ex parte Sheffield*, 611 S.W.3d at 633. However, the court of appeals reversed the trial court's decision concerning a speedy trial. *Id*. at 635. Although the court of appeals did not specify what the trial court was to do on remand, presumably it was to set the case for trial as quickly as possible, consistent with the Texas Supreme Court's Emergency Orders and the Constitution, or to allow the Sheffield to be released on a PR bond or a reduced bond, as requested.

The State filed a Motion for Rehearing and the court of appeals declined to alter its opinion and issued an order in response. *See Ex parte Sheffield*, 611 S.W.3d at 636-37 (order on reh'g).

On November 20, 2020, the State filed its petition for discretionary review with this Court. The petition was granted on November 24, 2021.

SUMMARY OF THE ARGUMENT

a writ of habeas corpus is a proper tool for address denial of a speedy trial when the applicant is asking for a speeding trial setting rather than a dismissal. Further, even if this Court finds that habeas was not appropriate in this case, the trial court did not have jurisdiction to try the case while the writ was pending, therefore the conviction is not legally valid, and the case should be remanded to the trial court for further proceedings.

ARGUMENT AND AUTHORITIES

ISSUE ONE: ARE SPEEDY TRIAL CLAIMS COGNIZABLE ON PRETRIAL HABEAS IF THE APPLICANT ASKS FOR A SPEEDY TRIAL RATHER THAN DISMISSAL?

Both our federal and state constitutions provide an accused the right to a speedy trial.[20] The Seventh Court of Appeals was correct in its analysis of whether pretrial habeas can be use when then Applicant asks for a speeding trial rather than a dismissal.

The Court of Appeals stated that while the opinions cited by the State concerned the right to speedy trial and an interlocutory appeal from the denial of a writ of habeas corpus, the relief sought in them was dismissal or discharge based upon a purported denial of the right. *See*, *e.g.*, *Ex parte Doster,* 303 S.W.3d 720, 721 (Tex. Crim. App. 2010) (raising, via an interlocutory appeal, the trial court's refusal ***to dismiss*** the prosecution due to the violation of the Interstate Agreement on Detainers and analogizing it to speedy trial violations); *Ex parte Delbert*, 582 S.W.2d 145, 145 (Tex. Crim. App. 1979) (noting that "[t]his is an appeal from an order denying relief after habeas corpus proceedings were instituted for the purpose of having the petitioner ***discharged*** for failure to provide a speedy trial")

[20] *Watts v. State*, No. 10-18-00033-CR, 2020 Tex. App. LEXIS 6863, at 3 (Tex. App.—Waco Aug. 26, 2020, no pet.) (mem. op., not designated for publication).

(emphasis added); *Ex parte Jones*, 449 S.W.2d 59, 59 (Tex. Crim. App. 1970) (noting that "[a]ppellant next contends that he should be ***discharged***, because he has been denied a speedy trial as provided for in Article I, Sec. 10, Vernon's Annotated Constitution of Texas") (emphasis added). The Court of Appeals further noted that the *Doster* court ruled as it did upon observing that 1) an exception to the rule against pretrial appeals for speedy trial claims actually threatened the values manifested in the Speedy Trial Clause, those values being a speedy disposition of the criminal action, *Ex parte Doster*, 303 S.W.3d at 726 (quoting *United States v. MacDonald*, 435 U.S. 850, 861, 98 S. Ct. 1547, 56 L. Ed. 2d 18 (1978)), and 2) the right to a speedy trial did not embody a right "not to be tried" but rather a right to a speedy disposition. *Id.* at 727. As for *Delbert*, the court said that the defendant had an adequate legal remedy through an appeal perfected after conviction. *Id.* (quoting *Ordunez*, 579 S.W.2d at 913–14).

In the instant case, Sheffield did not seek dismissal or discharge. He wanted to be tried and, thereby, avoid being made to languish in jail due to an inability to post bond. Unlike the relief sought in cases cited by the State, seeking a trial when a court indefinitely postpones one furthers the values inherent in the Speedy Trial Clause, as does assessing the refusal through an interlocutory appeal.

Denying Sheffield the right to seek a remedy indefinitely renders appealing the conviction no remedy at all. As the Court of Appeals opined "[w]ithout a trial,

there can be no conviction. Without a conviction, there can be no post-conviction appeal. And Sheffield is being denied that trial."

The rules regulating interlocutory appeals from orders denying habeas relief are strict, but not immutable. *Ex parte Perry*, 483 S.W.3d 884 (Tex. Crim. App. 2016). In *Perry*, the Court of Criminal Appeals uniformly ruled that certain types of claims could not be pursued through habeas corpus. However, it created an exception given the peculiar and weighty circumstances before it. As it said in *Perry*, "[p]retrial habeas, followed by an interlocutory appeal, is an extraordinary remedy . . . reserved 'for situations in which the protection of the applicant's substantive rights or the conservation of judicial resources would be better served by interlocutory review.'" *Id.* at 895 (quoting *Ex parte Weise*, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001)). The Court of Appeals stated that we "allow certain types of claims to be raised by pretrial habeas because the rights underlying those claims would be effectively undermined if not vindicated before trial." *Id.*

Therefore, the rules controlling pretrial habeas relief are strict, but not immutable. For those "certain types of claims" where "the rights underlying" them "would be effectively undermined if not vindicated before trial," a pretrial writ for habeas relief may be the appropriate course of action. The constitutional claim urged by Sheffield here is one such right given the unique circumstances preventing its enjoyment. Unless addressed before trial, the denial of his entitlement to a speedy

disposition cannot be vindicated when the trial judge indefinitely forgoes trial. His claim entails a substantive right to a timely disposition of the charges against him, which right is being effectively undermined through administrative fiat. These circumstances satisfy the very criteria used in *Perry* to justify deviation from historical limitations imposed on the availability of habeas relief.

ISSUE TWO: DID THE COURT OF APPEALS IMPROPERLY REVERSE THE TRIAL COURT'S RULING FOR WHAT THE TRIAL COURT SAID INSTEAD OF WHAT IT DID?

In overruling Sheffield's request for a speedy trial, the court said:

> The problem is that the State's ready, but the Court is not allowed to conduct a jury trial because the Office of Court Administration has instructed me that I'm not allowed to conduct any jury trials until they let me know. They don't think that there will be any jury trials until after August 15th, and that even then, there may not be any jury trials until next year. On top of the Office of Court Administration, the Chief Justice of the Court of Criminal Appeals and the Chief Justice of the Texas Supreme Court have instructed the courts, including me, that we are not to have live, in-person hearings unless it's absolutely necessary and there's no other way to have the hearing, and that we are not to have jury trials. We're not even to convene a Grand Jury selection hearing, so they've extended the previous Grand Jury six months, so we don't have to have 140 people in here to pick a new Grand Jury. So, I would like to have a jury trial. I would be more than willing to have a jury trial, but the Court is being prevented from having any trials under direct direction and instruction from higher authority.

It is true that our Supreme Court ordered that "[c]ourts must not conduct nonessential proceedings in person contrary to local, state, or national directives,

whichever is most restrictive, regarding maximum groups size." *Third Emergency Order Regarding the Covid-19 State of Disaster*, 596 S.W.3d 266, 267 (Tex. 2020). A week earlier, it ordered that "[s]ubject only to constitutional limitations, all courts in Texas may in any case, civil or criminal[,] [and] must to avoid risk...[,] without a participant's consent...[m]odify or suspend any and all deadlines and procedures...for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted." *First Emergency Order Regarding the Covid-19 State of Disaster*, 596 S.W.3d 265, 265 (Tex. 2020). Most recently, it reiterated aspects of these declarations by ordering trial courts of Texas to forgo "hold[ing] a jury proceeding, including jury selection or a jury trial prior to October 1 [2020]." *Twenty-Second Emergency Order Regarding The COVID-19 State of Disaster*, Misc. Docket No. 20-9095 (Tex. Aug. 6, 2020), *available at https*://www.txcourts.gov/media/1449564/209095.pdf (last visited Sept. 10, 2020). The declaration of a state of disaster may impact the judiciary and its disposition of cases pending before it. Nonetheless, "[t]he Constitution is not suspended when the government declares" such a disaster. *In re Abbott*, 601 S.W.3d 802, 805 (Tex. 2020). There was no authority cited permitting the "Office of Court Administration," the "[Presiding Judge] of the Texas Court of Criminal Appeals," or the "Chief Justice of the Texas Supreme Court" to unilaterally suspend the Constitution. That the Supreme Court deems this true is exemplified by its caveat

in paragraph 2 of its First Emergency Order subjecting the restriction imposed therein to "constitutional limitations."

The right to a speedy trial being a part of both the United States and Texas Constitutions, it too falls within *Abbott*'s edict. It remains alive and cannot be suspended. Nevertheless, the actual trial need not occur on the accused's timetable. In *State v. Munoz,* 991 S.W.2d 818, 821 (Tex. Crim. App. 1999), the Court stated that "[s]ince 1972 United States Supreme Court precedent has required courts to analyze federal constitutional speedy trial claims 'on an ad hoc basis' by weighing and then balancing four factors: (1) length of the delay, (2) reason for the delay, (3) assertion of the right, and (4) prejudice to the accused"). Yet, a state of disaster alone cannot indefinitely pretermit enjoyment of the right. Through its Twenty-Second Emergency Order, our Supreme Court has implicitly recognized that and provided means for trials to proceed. Thus, denying Sheffield's motion for a speedy trial because the Office of Court Administration, the Presiding Judge of the Texas Court of Criminal Appeals, or the Chief Justice of the Texas Supreme Court purportedly told the trial court at bar to indefinitely forgo proceedings last Spring was and is an erroneous legal basis upon which to act. Additionally, one cannot reasonably dispute that this error was harmful given the accused's lack of financial means to afford bail and his continuing incarceration.

ISSUE THREE: DID THE TRIAL COURT HAVE JURISDICTION TO HOLD TRIAL WHILE THE STATE'S PETITION FOR DISCRETIONARY REVIEW WAS PENDING IN THIS COURT?

Even if this Court finds against Defendant regarding the speedy trial issue under a writ of habeas corpus, the trial court did not have jurisdiction to try the case while the issue was pending with the Court of Criminal Appeals.

The State argues that the trial court did not have jurisdiction to hold trial while the State's Petition for Discretionary view was pending in the Court of Criminal Appeals. Their rationale seems to be that the writ of habeas corpus filed by the Appellant was a disguised interlocutory appeal and therefore the trial court did not should have stayed proceedings until a higher court issued a mandate. The fact is, the Appellant filed a writ of habeas corpus. That writ was denied by the trial court. The Appellant then appealed that decision to the Court of Appeals, who sent it back to the trial court for further proceedings. At that point, the State filed its Petition for Discretionary review. Between the filing of the Petition for Discretionary Review and the Court of Criminal Appeals' granting of the Petition, the trial court held a trial in the case.

The State is correct in its assertion that the Court should look to the substance of the filing and not the form. If this Court rules that the unique situation the trial court found itself in during the pandemic – the indefinite suspension of jury trials –

warrants an exception to the general rule that habeas is not an available remedy to correct a speedy trial violation, then dismissal is warranted. However, should the Court determine that no exception should be had, then the writ converts to an interlocutory appeal on the issue of bail. At this point, because mandate has not issued, the trial court did not have jurisdiction to hold a jury trial and the case should be remanded for further proceedings.

CONCLUSION

In conclusion, a writ of habeas corpus is a proper tool for address denial of a speedy trial when the applicant is asking for a speeding trial setting rather than a dismissal. Further, even if this Court finds that habeas was not appropriate in this case, the trial court did not have jurisdiction to try the case while the writ was pending, therefore the conviction is not legally valid, and the case should be remanded to the trial court for further proceedings.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant prays the Court to remand this case to the trial court for appropriate proceedings and for such further relief to which the Appellant may be justly entitled.

Respectfully Submitted,

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Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief contains 3,684 words (excluding the caption, table of contents, table of authorities, signature, proof of service, certification, and certificate of compliance). This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

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