Serial: **217708**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-IA-00026-SCT

CHARLES RAY MCCOLLUM, JR. A/K/A
CHARLES RAY MCCULLUM A/K/A
CHARLES MCCOLLUM, JR. A/K/A
CHARLES MCCULLUM, JR. A/K/A
CHARLES MCCULLUM

v.

STATE OF MISSISSIPPI

ORDER

Now before the en banc Court are the State of Mississippi's Motion to Dismiss Interlocutory Appeal and Charles Ray McCollum Jr.'s response.

On March 9, 2017, a panel granted McCollum's Petition for Interlocutory Appeal. The State seeks dismissal, citing, in part, *Beckwith v. State*, 615 So. 2d 1134 (Miss. 1992).

After due consideration, we find that further review is unnecessary and that the interlocutory appeal should be dismissed.

IT IS THEREFORE ORDERED that the motion is granted. The appeal is dismissed, with costs assessed to Simpson County.

SO ORDERED, this the 21st day of March, 2018.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR.,
CHIEF JUSTICE
FOR THE COURT

AGREE: WALLER, C.J., RANDOLPH, P.J., MAXWELL, BEAM, CHAMBERLIN AND ISHEE, JJ.

COLEMAN, J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS, P.J., AND KING, J.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-IA-00026-SCT

CHARLES RAY McCOLLUM, JR. A/K/A
CHARLES RAY McCULLUM A/K/A
CHARLES McCOLLUM, JR. A/K/A
CHARLES McCULLUM, JR. A/K/A
CHARLES McCULLUM

v.

STATE OF MISSISSIPPI

COLEMAN, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. Approximately one year ago, a panel of the Court granted McCollum's petition for interlocutory appeal and stayed the proceedings below. Both parties have filed their briefs, and the case was set for oral argument on March 6, 2018. It is ripe for a decision. The State's motion requesting the Court to dismiss the interlocutory appeal, which a majority of the Court today grants, is – however it is labeled – a motion asking the Court to reconsider its grant of McCollum's request for an interlocutory appeal. It provides no new information and includes no arguments not available to the State when it originally responded to McCollum's petition. However compelling the State's arguments might be, the Motion to Dismiss Interlocutory Appeal is egregious in its untimeliness and should, for its lateness alone, be denied.

¶2. The State argues interlocutory appeal should never have been granted and advances grounds in support of its argument that the Court never should have granted it. Mississippi

Rule of Appellate Procedure 27(h)(3) allows parties to request reconsideration of decisions to grant or deny petitions requesting interlocutory appeals, but the rule allows only fourteen days after the decision hands down to file for reconsideration. In the instant case, the State filed its motion *340 days* after the order handed down on March 9, 2017.

¶3. Procedural rules exist for a reason.

> This Court's constitutional power to promulgate judicial rules is no small thing. It is an awesome responsibility, *but no less so than our duty to enforce those rules fairly, evenly, and predictably*. The bench and bar are entitled to rely on this Court to apply the rules no less diligently to the courts than to the lawyers and litigants. And when a rule that we promulgated says a trial court "shall" do a thing, justice and fairness demand that, absent extremely unusual circumstances, we either require trial courts to do it, or change the rule.

Patton v. State, 34 So. 3d 563, 572 (¶ 25) (Miss. 2010) (emphasis added). To put it plainly, it is unfair to McCollum – and perhaps even to the State, although we today grant relief requested by it – to grant the petition for interlocutory appeal, delay his trial for a year, have his attorney and the State's counsel prepare briefs, and then dismiss the appeal, ripe for decision though it be, on such an egregiously late motion for reconsideration. Again, the State waited until 340 days after the order handed down to file the instant motion. Moreover, it cannot be that the lawyers and litigants who appear before us should expect the Court to grant such an untimely request. After a year of delaying the proceedings below and the expense and effort of fully briefing the issue here, the parties come away from the Court empty-handed. We refuse to answer the important question presented and briefed – whether the State can use testimony of a now-unavailable witness against McCollum in his upcoming trial.

¶4. Because, as set forth above, we today fail to apply our rules as we, in ***Patton***,

acknowledged we must, I respectfully disagree with today's order dismissing the instant appeal.

KITCHENS, P.J., AND KING, J., JOIN THIS SEPARATE WRITTEN STATEMENT.