Serial: **172566**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-IA-00819-SCT

FILED
OCT 27 2011
SUPREME COURT CLERK

RENNIE T. GIBBS

v.

STATE OF MISSISSIPPI

ORDER

By Order entered on June 17, 2010, a three-justice panel of this Court granted Rennie T. Gibbs's Petition for Permission to File Interlocutory Appeal. The Court sitting en banc now determines, sua sponte, that the petition was improvidently granted and should be dismissed. In ***Beckwith v. State***, 615 So. 2d 1134, 1144 (1992), this Court stated:

> Under our Constitution the State of Mississippi and our circuit judges have the authority and solemn responsibility following an indictment to proceed to final judgment in all criminal proceedings without interference. It is simply carrying Rule 5 too far to hold that a majority of this Court has the authority to intervene and interpose ourselves into a circuit court criminal trial, stop all proceedings, and order the discharge of a criminal defendant to protect an alleged violation of a right that can be addressed, and if violated, fully vindicated on appeal.

Id. at 1144. In ***Beckwith***, this Court addressed Beckwith's double-jeopardy claim on interlocutory appeal because the nature of a double-jeopardy claim requires immediate determination. ***Id.*** at 1146. Today's case does not involve a double-jeopardy claim. This Court's action today is consistent with ***Beckwith***.

IT IS THEREFORE ORDERED that Rennie T. Gibbs's Petition for Permission to File Interlocutory Appeal is hereby dismissed as improvidently granted.

SO ORDERED, this the 27th day of October, 2011.

GEORGE C. CARLSON, JR.,
PRESIDING JUSTICE

TO DISMISS: WALLER, C.J., CARLSON, P.J., RANDOLPH, LAMAR AND PIERCE, JJ.

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

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

¶1. Approximately 498 days after having granted this interlocutory appeal, this Court now seeks to dismiss this interlocutory appeal as having been improvidently granted. The term "improvident" has been defined as:

> A judgment, decree, rule, injunction, etc., when given or rendered without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice, is sometimes said to have been "improvidently" given or issued.

Black's Law Dictionary 758 (6th ed. 1990). Improvident is also defined as "[o]f or relating to a judgment arrived at by using misleading information or a mistaken assumption." *Black's Law Dictionary* 826 (9th ed. 2009). I believe this Court's action in dismissing this appeal to be improvident, and therefore would offer this objection.

¶2. On February 8, 2007, Gibbs was indicted in Lowndes County on a charge of depraved-heart murder. On November 18, 2009, Gibbs filed her motion to dismiss the indictment. On April 27, 2010, the circuit court denied Gibbs's motion to dismiss the

indictment but granted Gibbs permission for leave to file an interlocutory appeal. In doing so, the circuit court provided that:

> After having reviewed said Motion, the file and all briefs/memoranda herein, the Court is of the opinion that this is a case of first impression under the laws of the state of Mississippi. Accordingly, IT IS HEREBY ORDERED AND ADJUDGED that said Motion, at this time, is denied but Defendant is granted leave to file an interlocutory appeal.

¶3. On May 18, 2010, Gibbs filed her "Petition for Permission to File Interlocutory Appeal" with this Court. That motion was supported by an amicus brief filed by numerous organizations. On June 17, 2010, this Court entered an order granting Gibbs's "Petition for Permission to File Interlocutory Appeal," which stated, in pertinent part, that:

> This matter came before a panel of this court . . . on the Petition for Permission to File Interlocutory Appeal that was filed by Gibbs. *After due consideration*, the panel finds that petition should be granted.

(Emphasis added.)

¶4. Thereafter, Gibbs filed her motion for interlocutory appeal, along with supporting amicus briefs filed by more than fifty organizations and individuals. On February 7, 2011, the Court received final briefing in the case. On March 30, 2011, oral argument was granted in the case, and the argument took place on May 25, 2011.

¶5. When Gibbs filed her "Petition for Permission to File Interlocutory Appeal" on May 18, 2010, this Court was presented the same factual materials as presently are presented to the Court on interlocutory appeal. Gibbs's petition contained the following facts:

> On November 12, 2006, one month after she turned sixteen, Rennie Gibbs suffered a stillbirth. An autopsy was performed by Dr. Steven T. Hayne, who reported that the stillbirth was caused by "cocaine toxicity." Based on that report, Gibbs was indicted for depraved heart murder on February 4, 2007.

> Specifically, the indictment charges that Gibbs "did . . . kill her unborn child, a human being, while engaged in the commission of an act eminently dangerous to others and evincing a depraved heart, by using cocaine while pregnant with her unborn child . . . in violation of Miss. Code Ann. § 97-3-19 . . . ."

A copy of Gibbs's indictment was attached to her petition. The petition further explained that the defense had moved to dismiss the indictment on the ground that the State proposed to try Gibbs for a crime that did not exist and a crime that would be unconstitutional if it did exist. Gibbs also raised the same constitutional-law arguments that she raises in her interlocutory appeal: due-process violation, vagueness, lack of notice, prohibition on *ex post facto* laws, right to privacy, equal protection, and cruel and unusual punishment.

¶6. The petition noted that the case was one of first impression in Mississippi. Gibbs argued that the subject was appropriate for interlocutory review, stating that:

> [T]here is a "substantial basis . . . for a difference of opinion on a question of law" whose resolution will "[m]aterially advance the termination of the litigation and avoid exceptional expense," prevent "substantial and irreparable" harm or "[r]esolve an issue of general importance in the administration of justice." Miss. R. App. P. 5(a). Questions of first impression that control the outcome of a case are therefore ripe for interlocutory appeal. *See, e.g.*, *Howard v. Harper*, 947 So. 2d 854 (Miss. 2007).

Gibbs further argued that, similar to granting an interlocutory appeal for cases concerning double jeopardy, "interlocutory review is necessary in this case to vindicate Ms. Gibbs's due process right to avoid being tried once for a nonexistent crime." In her petition, Gibbs proceeded to address the same issues she raised in her interlocutory appeal: that the plain language of the depraved-heart murder statute does not apply to harm to unborn children, that the "unborn children" offenses statute excludes depraved-heart murder, and that the

Legislature repeatedly has declined to subject pregnant drug users to homicide or child abuse prosecutions. In its supporting briefs, amicus curiae addressed several public policy arguments, just as they did on interlocutory appeal.

¶7. On January 1, 1995, this Court adopted Mississippi Rules of Appellate Procedure, which provides for the granting of interlocutory appeals. Under Rule 5, interlocutory appeals are not to be routinely granted, but are intended to be granted when:

> [A] substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:
>
> (1) Materially advance the termination of litigation and avoid exceptional expense to the parties; or
>
> (2) Protect a party from substantial and irreparable injury; or
>
> (3) Resolve an issue of general importance in the administration of justice.

M.R.A.P. 5(a). The intended purpose of the Rule was not to short-circuit the trial process, but rather, to expedite case resolution in limited circumstances. I believe that this matter of first impression falls within the description of cases to which interlocutory appeal was intended to apply.

¶8. Because (1) I believe that Rule 5 is applicable to this case; (2) this Court waited until 498 days after granting interlocutory appeal to dismiss this appeal as having been improvidently granted; and (3) this Court now sends this matter back to the circuit court for trial to await a future day for an appeal on these same issues, I believe that this Court's improvident act is the dismissal of this interlocutory appeal. If, in fact, an interlocutory appeal should not have been granted, that decision should have been made on June 17, 2010,

not 498 days later, on October 27, 2011. The failure to do so results in the less-than-judicious use of this Court's time and resources, as well as those of the parties. Now some 1,723 days (four years, eight months, and twenty days) after the indictment and 498 days after granting interlocutory appeal, this Court returns this matter to the Lowndes County Circuit Court to be placed on the trial docket. I would, therefore, object to the entry of the order of dismissal.

DICKINSON, P.J., KITCHENS AND CHANDLER, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT.