



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-50,961-10

EX PARTE RODNEY REED, Applicant

**ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
AND MOTION TO STAY THE EXECUTION
IN CAUSE NO. 8701 IN THE 21ST DISTRICT COURT
BASTROP COUNTY**

**KEASLER, J., filed a concurring opinion, in which HERVEY and RICHARDSON, JJ.,
joined.**

CONCURRING OPINION

I join the Court's order staying Reed's execution and remanding the cause to the convicting court for further development of his first, second, and fourth allegations. I write separately to address the dissenting opinion's opposition to the Court's unremarkable observation that Judge Shaver continues to sit by assignment in this case.

Judge Shaver was originally appointed to the 21st Judicial District Court on May 28, 2014, "for the primary purpose of hearing cases and disposing of any accumulated business

requested by the court.” The assignment was to continue “as may be necessary for the assigned Judge to dispose of any accumulated business and . . . all other matters growing out of accumulated business or cases heard before the Judge herein assigned, or until terminated by the Presiding Judge.” The letter to Judge Shaver enclosed with the assignment order expressly stated that Judge Shaver was being assigned “to hear Cause No. 8701; State of Texas vs. Rodney Reed.” The dissent nevertheless complains that this letter “is not an assignment order.”

The document signed by the regional presiding judge, the Honorable Olen Underwood, and styled an “Order of Assignment by the Presiding Judge,” directs the “Clerk of the Court to which this assignment is made” to “post a copy of this order in a prominent place in the public area of the Clerk’s Office.” This instruction was made so as to “constitute ‘Notice of Assignment’ as required by Section 74.053, Texas Government Code.” Section 74.053, in turn, requires the presiding judge, “if it is reasonable and practicable and if time permits,” to “give notice of the assignment to each attorney representing a party to the case that is to be heard.”¹ The page bearing Judge Underwood’s signature does not contain an express reference to Rodney Reed’s case. But the enclosed document styled a “Notice of Assignment” does.² It is or ought to be crystal clear that Judge Underwood’s “order” includes the enclosed notice of assignment by reference. If the only things that Judge

¹ TEX. GOV’T CODE § 74.053.

² See Appendix at 3 (“*NOTICE OF ASSIGNMENT*”) (italics in original).

Underwood “order[ed]” were contained within the four corners of the page bearing his signature, then posting the “order” as such would fail to give notice to “each attorney representing a party to the case that is to be heard . . . by the assigned judge.”

Later events should further vanquish any doubt that Judge Shaver was appointed to Reed’s case. In 2017, this Court remanded to the convicting court one of Reed’s subsequent writs. In a letter to Judge Underwood, Reed’s defense counsel recognized that Reed’s case had been assigned to Judge Shaver but asked Judge Underwood to reassign the case “to an active, elected judge who has the resources necessary to handle this complex and important matter.” Judge Underwood acknowledged receipt of the correspondence and denied the request in a letter he signed. Matters are and have been regularly proceeding in Reed’s case, and there is no indication that Judge Underwood ever terminated Judge Shaver’s assignment.

Finally, the dissent argues that this issue is not before the Court. However, just recently the elected judge of the 21st Judicial District Court scheduled a hearing on two motions that were pending in Reed’s case. The parties disputed whether the elected judge was authorized to do so. And because we are now remanding Reed’s case, leaving this dispute unresolved would essentially leave the parties in limbo as to who has authority to oversee the Court’s remand order. If nothing else, judicial economy counsels our resolving this issue before needless and time-consuming additional litigation is generated. With these observations, I join the Court’s order.

Filed: November 15, 2019

Publish

APPENDIX

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, Presiding Judge
Second Administrative Judicial Region

Attest:

Rebecca Brite
Administrative Assistant

Assignment # 25737

I, the undersigned Clerk of District and County Court at Law Courts for Bastrop County, Texas, do certify that the foregoing is a true and correct copy of the original document now on file and record in my office.

WITNESS my hand and seal of said Court this 28th day of May, 2014

Sarah Loucks, Clerk of Courts
By Deputy

FILED 129
DATE 5/28/2014
Sarah Loucks
District Clerk, Bastrop County



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,

Handwritten signature of Rebecca Brite in blue ink.

Rebecca Brite
Enclosure(s)

I, the undersigned Clerk of District and County Court at Law Courts for Bastrop County, Texas, do certify that the foregoing is a true and correct copy of the original document now on file and record in my office.
WITNESS my hand and seal of said Court this 28th day of May, 2014
By Sarah Loucks Clerk of Courts
Deputy

FILED 12 PM
DATE 5/28 2014
Sarah Loucks
District Clerk, Bastrop County



Second Administrative Judicial Region of Texas

Olen Underwood
Presiding Judge

Melanie Sipes
Administrative Assistant

Rebecca Brite
Administrative Assistant

May 28, 2014

Bryce Benjet
VIA US MAIL

Andrew McRae
VIA FACSIMILE
Fax: 512-637-1583

Matthew Ottoway
VIA FACSIMILE
Fax: 512-320-8132

NOTICE OF ASSIGNMENT

The Honorable Doug Shaver, Senior Judge, 262nd Judicial District Court, has been assigned to Cause No. 8701; State of Texas vs. Rodney Reed; 21st Judicial District Court of Bastrop County, Texas.

Enclosure

I, the undersigned Clerk of District and County Court at Law Courts for Bastrop County, Texas, do certify that the foregoing is a true and correct copy of the original document now on file and record in my office.
WITNESS my hand and seal of said Court this 28 day of May, 2014.
By Sarah Loucks Deputy
Sarah Loucks, Clerk of Courts

FILED 12 PM
DATE 5/28/2014
Sarah Loucks
District Clerk, Bastrop County