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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2007-2008

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Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama

v.

Thomas J. Andrews)

(Autauga Circuit Court, CC-07-11)

LYONS, Justice.

PETITION DENIED. NO OPINION.

Smith, Bolin, and Murdock, JJ., concur.

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Stuart, J., concurs specially.

Cobb, C.J., recuses herself.

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STUART, Justice (concurring specially).

Rule 21(e)(1), Ala. R. App. P., provides for the review by this Court of a decision of a court of appeals disposing of a petition for a writ of mandamus. Rule 21(e)(1), states, in pertinent part:

"(1) A decision of a court of appeals on an original petition for a writ of mandamus or prohibition or other extraordinary writ (i.e., a decision on a petition filed in the court of appeals) may be reviewed de novo in the supreme court, and an application for rehearing in the court of appeals is not a prerequisite for such review. If an original petition for extraordinary relief has been denied by the court of appeals, review may be had by filing a similar petition in the supreme court (and, in such a case, in the supreme court the petition shall seek a writ directed to the trial judge). ..."

(Emphasis added.)

In this case, the State filed a petition for a writ of mandamus in the Court of Criminal Appeals. The Court of Criminal Appeals denied the State's petition by an order. State v. Andrews (No. CR-06-1677, July 13, 2007), ___ So. 2d ___ (Ala. Crim. App. 2007) (table). The State then filed a petition for a writ of mandamus in this Court seeking a de novo review. The State, however, did not comply with Rule 21(e)(1), because, instead of "seeking a writ directed at the

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trial judge," the State requested that this Court order the Court of Criminal Appeals to vacate its order. To warrant issuance of a writ of mandamus by this Court, the petitioner must establish a clear legal right to the relief requested. "An indispensable requirement for mandamus is the presence of a right in the applicant to the thing applied for." Campbell v. City of Hueytown, 289 Ala. 388, 390, 268 So. 2d 3, 4 (1972). In light of the requirements of Rule 21(e)(1), the fact that the Court of Criminal Appeals denied the petition, and the State's failure to "seek a writ directed to the trial judge," I conclude that the State has no right to ask this Court to issue a writ directed to the Court of Criminal Appeals. Consequently, the State cannot establish a clear legal right to the writ, and denial of the petition is proper.