Serial: **233460**

FILED

SEP 04 2020

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-AD-00001-SCT
&
No. 89-R-99038-SCT

IN RE: EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19)

EMERGENCY ADMINISTRATIVE ORDER-16

As the national and state emergencies created by Coronavirus (COVID-19) continue, the Supreme Court finds an additional Emergency Administrative Order is necessary to amend earlier Emergency Administrative Orders.

Emergency Administrative Order-14 reiterated that "[a]ll courts are urged to limit in-person, courtroom contact as much as possible by utilizing available technologies, including electronic filing, teleconferencing, and videoconferencing."

On March 25, 2020, the Attorney General for the State of Mississippi and the State Public Defender filed a Joint Motion for Partial Temporary Suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure[1] and sought permission "to allow the use of interactive audiovisual equipment to conduct probation violation hearings, felony plea hearings, and sentencing hearings."

---

[1]Rule 1.8(c) of the Mississippi Rules of Criminal Procedure provides that "[a]ppearance by interactive audiovisual equipment, including video conferencing, may be permitted in the discretion of the court at any proceeding except that this Rule shall not apply to any trial, probation violation hearing, or any felony plea and/or sentencing." MRCrP 1.8(c).

On March 26, 2020, the Court entered Emergency Administrative Order-7 which "temporarily suspended" Rule 1.8(c) and allowed the use of "interactive audiovisual equipment" to conduct probation-violation hearings and felony-sentencing hearings.[2]

On March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. In relevant part, the CARES Act authorized federal courts to use video teleconferencing, under certain circumstances, for various criminal proceedings during the COVID-19 emergency, including felony pleas under Rule 11 of the Federal Rules of Criminal Procedure. *See* CARES Act, H.R. 748. Federal district courts across the nation, including those in Mississippi, have since authorized video teleconferencing for felony-plea proceedings.[3]

On August 5, 2020, the Court issued Emergency Administrative Order-15 which provided that "since the entry of Emergency Administrative Order-7 on March 26, 2020, the

---

[2]The Order added that if "interactive audiovisual equipment" is used in such proceedings:

> (1) a full record of the proceedings shall be made, which may include an electronic recording (digitally or on tape);
> (2) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and
> (3) provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding.

Furthermore, the Order emphasized that it did not "suspend any requirement for defense counsel to participate in such proceedings, but such may include their remote participation via the use of interactive audiovisual equipment."

[3]https://www.thomsonreuters.com/content/dam/ewp-m/documents/thomsonreuters/en/pdf/other/covid-19-roundup-court-closures-continue.pdf

increased transmission of the COVID-19 virus has continued to impair the normal functioning of Mississippi state courts." In the Court's estimation, those "evolving circumstances warrant[ed] revisiting the issue of whether to temporarily suspend Rule 1.8(c) as it pertains to the use of 'interactive audiovisual equipment' in 'felony plea' hearings." As such, the Court directed the Attorney General for the State of Mississippi and the State Public Defender to provide "supplemental briefing" on the issue. The Order also provided "the bench, the bar, and any interested parties . . . the opportunity to comment on same."

The Court received supplemental briefs from the State Public Defender and the Attorney General for the State of Mississippi,[4] as well as responses from:

(1) Circuit Judge John Mark Weathers of the Twelfth Circuit Court District;

(2) Circuit Judge M. James Chaney, Jr. of the Ninth Circuit Court District;

(3) Circuit Judge Prentiss G. Harrell of the Fifteenth Circuit Court District; and

(4) Circuit Judge Eleanor Faye Peterson of the Seventh Circuit Court District.

All responded that Rule 1.8(c) should be "temporarily suspended" to permit the use of "interactive audiovisual equipment" to conduct "felony plea" hearings.

In light of the aforementioned responses, the fluid nature of this situation, and in the interest of balancing the health risks presented by COVID-19 with the courts' constitutional

---

[4]The supplemental brief of the Attorney General for the State of Mississippi represented that its position was supported by the Mississippi Sheriffs' Association.

and statutory duty to remain open and accessible, the Court finds that the temporary suspension of Rule 1.8(c) should include "felony plea" hearings.[5]

In considering the propriety of in-person interactions versus the utilization of available technologies for felony-plea proceedings, local judges shall assess the circumstances within their respective jurisdictions. As sagely noted by Chief Judge Daniel P. Jordan III of the United States District Court for the Southern District of Mississippi in his recent Special Orders addressing the COVID-19 pandemic, "the fact that some judges may proceed with in-person hearings in some contexts does not mean that they would be advisable in all [jurisdictions] in all contexts[;]" and a "judge's ruling to move forward in . . . one case in no way speaks for the other judges in that or any other [jurisdiction] as they assess the propriety of moving forward in their cases." Special Order #8 (S.D. Miss. July 31, 2020); Special Order #7 (S.D. Miss. July 1, 2020).

IT IS THEREFORE ORDERED that, until further Order of the Court, the temporary suspension of Rule 1.8(c) of the Mississippi Rules of Criminal Procedure shall include "felony plea" hearings. Upon the entry of this Order, the following requirements for the use of "interactive audiovisual equipment" shall be in effect in such proceedings:

> (1) a full record of the proceedings shall be made, which may include an electronic recording (digitally or on tape);

---

[5]In such proceedings, the aforementioned requirements for the use of "interactive audiovisual equipment" shall apply. *See supra* note 2. Additionally, after consultation with counsel, the defendant must provide written consent to the use of "interactive audiovisual equipment" during the "felony plea" proceedings. Finally, counsel must be physically present with the defendant during the proceedings, with each taking appropriate and/or mandated measures to minimize the potential transmission of COVID-19 (e.g., face coverings over the nose and mouth; social distancing).

(2) after consultation with counsel, the defendant shall provide written consent to the use of "interactive audiovisual equipment" during the proceedings;
(3) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and
(4) counsel shall be physically present with the defendant during the proceedings, with each taking appropriate and/or mandated measures to minimize the potential transmission of COVID-19 (e.g., face coverings over the nose and mouth; social distancing), and provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding.

SO ORDERED, this the 4 day of September, 2020.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE
FOR THE COURT