

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED

08/13/2024

Clerk of the
Appellate Courts

IN RE TENNESSEE SUPREME COURT RULE 10B

No. W2024-00932-SC-UNK-CV

ORDER

The petitioner, Larry E. Parrish, has filed an original petition in this Court styled as a “Petition to Declare Tennessee Supreme [Court] Rule 10B Unconstitutional.” The Petition challenges Rule 10B’s requirement that a party seeking a trial judge’s disqualification or recusal must file a written motion promptly after the party learns or reasonably should have learned of the facts establishing the basis for recusal. Tenn. Supr. Ct. R. 10B 1.01. Parrish argues that this requirement is facially unconstitutional because a party’s right to a fair and impartial judge is a “structural right” that the party cannot forfeit or waive by failing to file a timely motion.

This Court has the authority to consider original actions asserting “facial challenges” to the validity of Supreme Court rules. *Long v. Bd. of Professional Responsibility of Supreme Court*, 435 S.W.3d 174, 184–85 (Tenn. 2014). To assert a facial challenge, however, the petitioner “must establish that no set of circumstances exist under which the [statute or rule] would be valid.” *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006). The fact that the statute or rule might operate unconstitutionally under some plausible set of circumstances is insufficient to render it facially unconstitutional. *See id.*

Parrish cannot carry his “heavy legal burden,” *id.*, of showing that Rule 10B is unconstitutional in all its applications. This Court has repeatedly underscored the “well-settled” rule in this State that a party can waive the right to seek a judge’s disqualification or recusal by not timely seeking relief. *See, e.g., Cook v. State*, 606 S.W.3d 247, 254 (Tenn. 2020); *Bean v. Bailey*, 280 S.W.3d 798, 803 (Tenn. 2009); *Winters v. Allen*, 62 S.W.2d 51, 52 (Tenn. 1933); *Obion Cnty. v. Coulter*, 284 S.W. 372, 374–75 (Tenn. 1924); *Radford Trust Co. v. E. Tenn. Lumber Co.*, 21 S.W. 329, 331 (Tenn. 1893). Rule 10B requires a fact-intensive, case-specific inquiry to determine whether a party timely sought recusal or disqualification. Parrish cannot show that Rule 10B is unconstitutional in all its applications, as is required to prevail on a facial challenge. In fact, this Court has held

in at least one case that a trial judge's recusal was required even though the parties did not file a recusal motion. *See, e.g., Cook*, 606 S.W.3d at 254. Even if Parrish could point to hypothetical circumstances in which Rule 10B might unconstitutionally prevent a party from obtaining a trial judge's recusal—a showing he has not made—it still would not establish that Rule 10B is facially unconstitutional.

Parrish's primary legal authority, *Williams v. Pennsylvania*, 579 U.S. 1 (2016), is not to the contrary. In *Williams*, the United States Supreme Court held that a post-conviction petitioner who *did* timely seek recusal of an appellate judge was not required to show that the judge's unconstitutional involvement affected the outcome of his appeal to obtain relief. *Id.* at 15–16. *Williams* does not excuse a party from timely raising a recusal objection.

Accordingly, Parrish's petition challenging the constitutionality of Tennessee Supreme Court Rule 10B is hereby denied. The costs are taxed to Larry E. Parrish, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM