

Office as a whole from prosecuting Petitioner's case. On January 5, 2007, Respondent, the Honorable Virgil C. Black, District Judge, denied Petitioner's request. Petitioner now "requests this court to issue a Writ of Prohibition in this matter." (Application for Writ at 1.)

Petitioner's pleadings do not state specifically what it is that he wishes to have ceased, prevented, or arrested through the extraordinary writ of prohibition that he is requesting this Court to issue. We assume it most likely, however, that Petitioner is requesting a writ of prohibition that would bar Respondent from permitting his further prosecution in the District Court so long as members of the Oklahoma County District Attorney's office are conducting that prosecution. We therefore construe Petitioner's pleadings accordingly.

In order to obtain a writ of prohibition from this Court, a Petitioner, among other things, must demonstrate that the trial court's action "will result in injury for which there is no other adequate remedy." Rule 10.6(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2007). In Petitioner's matter, there exists an adequate remedy. Should Petitioner be convicted, he may raise on direct appeal any claim properly preserved by him that the attorneys prosecuting him were disqualified from doing so.¹

Because Petitioner's complaint may be preserved and raised on direct appeal, he has not shown himself entitled to extraordinary relief. Additionally,

¹ *E.g.*, *Baker v. State*, 1996 OK CR 49, ¶¶ 8-11, 927 P.2d 577, 580-81 (on direct appeal, Court reversed order revoking suspended sentence for second degree burglary because two of the attorneys who had appeared for the State on preliminary matters concerning the revocation proceedings had also been defense counsel for the defendant in the burglary conviction and had been defense counsel in a prior proceeding that partially revoked the suspension order); *Hain v. State*, 1996 OK CR 26, ¶ 15, 919 P.2d 1130, 1137 (in direct appeal of murder conviction, the Court held that trial court did not abuse its discretion in denying defendant's motion to recuse the prosecutor); *Crawford v. State*, 1992 OK CR 62, ¶ 50, 840 P.2d 627, 637-38 (in direct appeal of murder conviction, Court found "no facts which warrant the disqualification of [the Assistant District Attorney] from the prosecution of this case").

before a Petitioner may obtain a writ of prohibition from this Court, he must establish the District Court's exercise of judicial authority "is unauthorized by law." Rule 10.6(A). Generally, this means the Petitioner must show the District Court is without jurisdiction to act in the matter decided. Petitioner, of course, does not contend that the trial court had no jurisdiction to decide his motion to disqualify the attorneys within the District Attorney's Office. Instead, his claim is simply that it was an abuse of discretion to deny his motion.

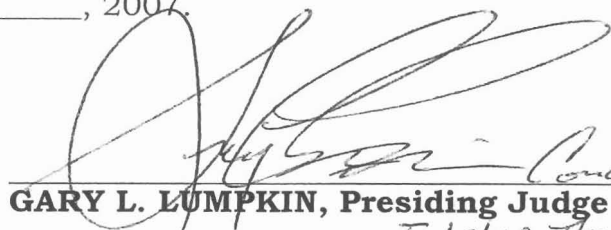
Generally, so long as the lower court operates within its legal authority and has jurisdiction of the subject matter and the parties, neither writs of mandamus nor prohibition are available to correct adverse orders occurring during the course of a defendant's prosecution. *Jones v. Dillard*, 1976 OK CR 9, ¶ 6, 545 P.2d 209, 210. Writs of mandamus and prohibition cannot be used to control a lower court's exercise of judicial discretion or to prevent an erroneous exercise of discretion. *State ex rel. Worthen v. Walker*, 1983 OK CR 130, ¶¶ 3-4, 668 P.2d 1174, 1175.

IT IS THEREFORE THE ORDER OF THIS COURT that as Petitioner has not demonstrated that his claim is one that is properly addressed thorough proceedings for a writ of prohibition, we **DECLINE** to assume original jurisdiction and hereby **DISMISS** Petitioner's January 16, 2007, Application for Writ of Prohibition.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 18th day

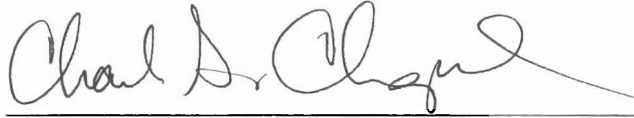
of January, 2007.


GARY L. LUMPKIN, Presiding Judge

I believe this Court's decision in Mary Dickens, 1997 OK CR 2, 934 P.2d 343 applies and the writ is properly denied.



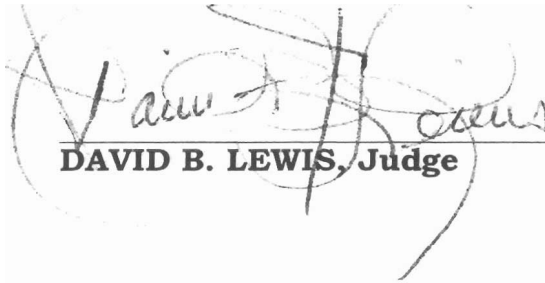
CHARLES A. JOHNSON, Vice Presiding Judge



CHARLES S. CHAPEL, Judge

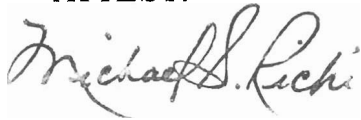


ARLENE JOHNSON, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

OA