IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,	§	
	§	
Appellee,	§	Case: _____
	§	
v.	§	M2017-01975-CCA-R3-CO
	§	
	§	Williamson County Circuit Court
KENDALL EARLY SOUTHALL,	§	1992-CR-916; 1992-CR-1013; 1992-
	§	CR-1045; 1994-CR-2571; 1995-CR-
Appellant.	§	2701; 2001-CR-7691; 2002-CR-8614

RULE 11 APPLICATION OF APPELLANT KENDALL SOUTHALL

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I. TABLE OF CONTENTS

I. TABLE OF CONTENTS ii

II. TABLE OF AUTHORITIES iii

III. TENN. R. APP. P. 11(b)(1) FILING STATEMENT 1

IV. TENN. R. APP. P. 11(b)(2) STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW 2

V. TENN. R. APP. P. 11(b)(3) STATEMENT OF THE FACTS RELEVANT TO THE QUESTIONS PRESENTED FOR REVIEW 4

VI. TENN. R. APP. P. 11(b)(4) STATEMENT OF THE REASONS SUPPORTING REVIEW 12

A. RESOLVING WHETHER TENN. R. APP. P. 3 DEPRIVES LITIGANTS OF ANY OPPORTUNITY TO APPEAL AN IMPROPER DENIAL OF A MOTION TO TERMINATE COURT COSTS CALLS FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY AUTHORITY. 13

1. The Rules of Appellate Procedure should not be read to foreclose a litigant from appealing the erroneous denial of a motion to terminate court costs. 14

2. Review of a trial court's improper denial of a motion to terminate court costs cannot be had under certiorari, and restricting such review to certiorari would also deprive litigants of meaningful appellate review. 17

B. THE COURT OF CRIMINAL APPEALS' OPINION DISMISSING MR. SOUTHALL'S CASE FOR LACK OF JURISDICTION INSTEAD OF ADJUDICATING ITS MERITS IS CONTRARY TO OVERWHELMING AND BINDING PRECEDENT. 19

C. THE MERITS OF THE APPELLANT'S CLAIM PRESENT "IMPORTANT QUESTIONS OF LAW" AND "QUESTIONS OF PUBLIC INTEREST." 22

VII. CONCLUSION 31

VIII. CERTIFICATE OF SERVICE 32

IX. APPENDIX OF EXHIBITS 33

II. TABLE OF AUTHORITIES

Cases

Anderson Cty. Bd. of Educ. v. Nat'l Gypsum Co.,
821 F.2d 1230 (6th Cir. 1987) 23

Bannock Cty. v. Bell,
65 P. 710 (Ida. 1901) 27

Board of School Com'rs of Mobile Co. v. Architects Group, Inc.,
752 So.2d 489 (Ala. 1999) 27

Boruff v. State, No. E2010-00772-CCA-R3CO,
2011 WL 846063 (Tenn. Crim. App. Mar. 10, 2011) 15

Childress v. Bennett,
816 S.W.2d 314 (Tenn. 1991) 2. 10, 21, 24

City of Chattanooga v. Davis,
54 S.W.3d 248 (Tenn. 2001) 3, 21

Cobb v. Beier,
944 S.W.2d 343 (Tenn. 1997) 2, 20-21

Covington Pike Toyota, Inc. v. Cardwell,
829 S.W.2d 132 (Tenn. 1992) 27

Crown Enterprises, Inc. v. Woods,
557 S.W.2d 491 (Tenn. 1977) 28

Estate of Doyle v. Hunt,
60 S.W.3d 838 (Tenn. Ct. App. 2001) 2, 20

Fallin v. Knox County Board of Commissioners,
656 S.W.2d 338 (Tenn.1983) 9, 20

Fayne v. Vincent,
301 S.W.3d 162 (Tenn. 2009) 14

Guar. Tr. Co. of New York v. United States,
304 U.S. 126 (1938) 25

Hamilton Cty. Bd. of Educ. v. Asbestospray Corp.,
909 S.W.2d 783 (Tenn. 1995) 24

Henley v. Cobb,
916 S.W.2d 915 (Tenn. 1996) 3, 10, 21

Hill v. Hill, No. M2006-01792-COA-R3CV,
2008 WL 110101 (Tenn. Ct. App. Jan. 9, 2008) 2, 9, 20

Hood v. State, No. M2009-00661-CCA-R3-PC,
2010 WL 3244877 (Tenn. Crim. App. Aug. 18, 2010) 15

Hughes v. Tennessee Bd. of Prob. & Parole,
514 S.W.3d 707 (Tenn. 2017) 30

Inhabitants of Topsham v. Blondell,
19 A. 93 (Me. 1889) 27

In re Akins,
87 S.W.3d 488 (Tenn. 2002) 2-3, 21

Jones v. Prof'l Motorcycle Escort Serv., L.L.C.,
193 S.W.3d 564 (Tenn. 2006) 2, 21

King v. Pope,
91 S.W.3d 314 (Tenn. 2002) 3, 21

Lewis v. State, No. E2014-01376-CCA-WR-CO,
2015 WL 1611296 (Tenn. Crim. App. Apr. 7, 2015) 15

Mayor & Council of Wilmington v. Dukes,
157 A.2d 789 (Del. 1960) 27

New Jersey Educ. Facilities Auth. v. Gruzen P'ship,
592 A.2d 559 (N.J. 1991) 26

Norton v. Everhart,
895 S.W.2d 317 (Tenn. 1995) passim

Redwing v. Catholic Bishop for Diocese of Memphis,
363 S.W.3d 436 (Tenn. 2012) 29

Shootman v. Dep't of Transp.,
926 P.2d 1200 (Colo. 1996) 25

Spires v. Simpson, No. E2015-00697-SC-R11-CV,
2017 WL 6602434 (Tenn. Dec. 27, 2017) 3

State, Dep't of Transp. v. Sullivan,
527 N.E.2d 798 (Ohio 1988) 27

State ex rel. Moore & Assocs., Inc. v. West,
246 S.W.3d 569 (Tenn. Ct. App. 2005) 8, 18

State v. Flemming,
19 S.W.3d 195 (Tenn. 2000) 29

State v. Hegel, No. E2015-00953-CCA-R3-CO,
2016 WL 3078657 (Tenn. Crim. App. May 23, 2016) 15

State v. Henning,
975 S.W.2d 290 (Tenn. 1998) 3, 21

State v. Johnson,
56 S.W. 3d 44 (Tenn. Crim. App. 2001) 15

State v. Minimum Salary Dep't. of A.M.E. Church,
477 S.W.2d 11 (Tenn. 1972) 20

State v. Stuart,
91 N.E. 613 (Ind. 1910) 27

State v. Walls,
537 S.W.3d 892 (Tenn. 2017) 13

State v. Whitson, No. E2010-00408-CCA-R3CD,
2011 WL 2555722 (Tenn. Crim. App. June 28, 2011) 2, 10, 20

Statutes and Rules

Fla. Stat. Ann. § 95.011 26

Ga. Code Ann. § 9-3-1 26

Ky. Rev. Stat. § 413.150 26

Mass. Gen. Laws. c. 260, § 18 26

Minn. Stat. § 541.01 26

MO Rev Stat § 516.360 26

Mont. Code Ann. § 27-2-103 26

Neb. Code § 25-218 26

N.Y. C.P.L.R. § 201 26

N.D. Cent. Code Ann. § 28-01-23 26

S.C. Code Ann. § 15-3-620 26

S.D. Codified Laws § 15-2-2 26

Tenn. Code Ann. § 27-8-101 8, 17

Tenn. Code Ann. § 27-8-102 8, 17

Tenn. Code Ann. § 28-1-113 passim

Tenn. Code Ann. § 28-3-110(a) 4

Tenn. Code Ann. § 40-2-101(a) 28

Tenn. Code Ann. § 40-2-101(b) 28

Tenn. Code Ann. § 40-24-105(a) 5, 15, 16

Tenn. Code Ann. § 40-24-105(b)(1) 30

Tenn. Code Ann. § 40-29-202(2) 30

Tenn. Code Ann. § 40-32-101(g)(2)(C)(i) 30

Tenn. Code Ann. § 41-21-812(a) 30

Tenn. R. App. P. 1 2, 13-14, 16, 19

Tenn. R. App. P. 3(a) passim

Tenn. R. App. P. 3(b) 5, 6, 10, 15, 16

Tenn. R. App. P. 11(a)(1) 12, 19

Tenn. R. App. P. 11(a)(2) 12, 15, 22

Tenn. R. App. P. 11(a)(3) 12, 22

Tenn. R. App. P. 11(a)(4) 12, 13

Tenn. R. App. P. 11(b)(1) 1

Tenn. R. App. P. 11(b)(2) 2

Tenn. R. App. P. 11(b)(3) 4

Tenn. R. App. P. 11(b)(4) 12

Tenn. R. App. P. 13(d) 7, 18

Tenn. R. App. P. 17 1, 10, 12

Tenn. R. App. P. 21(a) 1

Tenn. R. App. P. 39(a) 1, 11

W. Va. Code Ann. § 55-2-19 26

Wis. Stat. Ann. § 893.87 26

Additional Authorities

Tenn. Const. art. I, § 1 25

Tenn. Op. Att'y Gen. No. 06-135 (Aug. 21, 2006) 6, 16

III. TENN. R. APP. P. 11(b)(1) FILING STATEMENT

Pursuant to Tenn. R. App. P. 11(b)(1), the Appellant states that judgment in the Court of Criminal Appeals was entered on August 17, 2018. *See* **Exhibit #1** (Opinion of the Court of Criminal Appeals). Thereafter, on August 20, 2018, the Appellant filed a timely petition to rehear under Tenn. R. App. P. 39(a), or, in the alternative, to transfer this appeal to the Court of Appeals for decision under Tenn. R. App. P. 17. *See* **Exhibit #2**. Appellant's petition to rehear was denied by the Court of Criminal Appeals on August 21, 2018. *See* **Exhibit #3** (Court of Criminal Appeals' Order Denying Rehearing).

Accordingly, under Tenn. R. App. P. 11(b), Appellant's Rule 11 application was to be filed with the clerk of the Supreme Court by October 20, 2018. *See id.* ("The application for permission to appeal shall be filed with the clerk of the Supreme Court within 60 days after the entry of the judgment of the Court of Appeals or Court of Criminal Appeals if no timely petition for rehearing is filed, or, if a timely petition for rehearing is filed, within 60 days after the denial of the petition or entry of the judgment on rehearing."). October 20, 2018 being a Saturday, however, Appellant's application was due by Monday, October 22, 2018. *See* Tenn. R. App. P. 21(a). Thus, the Appellant's application has been timely filed. *See id.*

IV. TENN. R. APP. P. 11(b)(2) STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

The Appellant presents three (3) questions for the Court's review:

1. Whether a trial court's denial of a petitioner's motion to terminate allegedly time-barred court costs, taxes, and fines is ever subject to appeal under Tenn. R. App. P. 3.

2. If an appeal may not be taken from a trial court's denial of a motion to terminate court costs, taxes, and fines, whether the Court of Criminal Appeals had a "duty to convert the [Appellant's] petition to its proper form," and whether it "should have treated the [Appellant's] petition as one for a writ of certiorari" and adjudicated it pursuant to *Norton v. Everhart*, 895 S.W.2d 317, 319 (Tenn. 1995); Tenn. R. App. P. 1;[1] and a wealth of additional precedent reflecting that courts must avoid exalting form over substance and should treat pleadings according to the relief sought, rather than according to their title.[2] And:

[1] Tenn. R. App. P. 1 ("These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding **on its merits**.") (emphasis added).

[2] *See, e.g., Estate of Doyle v. Hunt*, 60 S.W.3d 838, 842 (Tenn. Ct. App. 2001) ("A trial court is not bound by the title of a pleading, but rather the court is to give effect to the pleading's substance and treat it according to the relief sought therein."); *Hill v. Hill*, No. M2006-01792-COA-R3CV, 2008 WL 110101, at *3 (Tenn. Ct. App. Jan. 9, 2008) (same); *State v. Whitson*, No. E2010-00408-CCA-R3CD, 2011 WL 2555722, at *1 (Tenn. Crim. App. June 28, 2011) (holding that "[t]he State has no right to appeal via the Tennessee Rules of Appellate Procedure," but "review[ing] the State's claims . . . via the common law writ of certiorari" instead and granting the State relief); *Cobb v. Beier*, 944 S.W.2d 343, 346 (Tenn. 1997) ("it is exalting form over substance to dismiss an appeal on the sole basis that counsel failed to serve a copy of the notice of appeal on the appellate court clerk. . . . To hold otherwise would impede the search for justice."); *Childress v. Bennett*, 816 S.W.2d 314, 316 (Tenn. 1991) ("it is the general rule that courts are reluctant to give effect to rules of procedure which seem harsh and unfair, and which prevent a litigant from having a claim adjudicated upon its merits"); *Jones v. Prof'l Motorcycle Escort Serv., L.L.C.*, 193 S.W.3d 564, 573 (Tenn. 2006) (holding that courts must not "exalt[] form over substance to deprive a party of his day in court and frustrat[e] the resolution of the litigation on the merits."); *In re Akins*, 87 S.W.3d 488, 495 (Tenn. 2002) ("we . . . avoid

3. Whether the doctrine of *nullum tempus occurrit regi*—as codified by Tenn. Code Ann. § 28-1-113—should be restricted as written to "actions brought by the state of Tennessee," rather than extended to county and municipal governments, and whether Tenn. Code Ann. § 28-1-113 should be narrowly construed in favor of taxpayers and repose.

All three issues present pure questions of law. Accordingly, each question presented is "subject to de novo review with no presumption of correctness in the lower courts' decisions." *Spires v. Simpson*, 539 S.W.3d 134, 140 (Tenn. 2017).

exalting form over substance."); *King v. Pope*, 91 S.W.3d 314, 325 (Tenn. 2002) ("To do so would exalt form over substance, something which . . . this Court refuses to do."); *City of Chattanooga v. Davis*, 54 S.W.3d 248, 260 (Tenn. 2001) (overruling a prior decision that "exalted technical form over constitutional substance in a manner rarely seen elsewhere."); *State v. Henning*, 975 S.W.2d 290, 298 (Tenn. 1998) ("To hold otherwise would exalt form over substance."); *Henley v. Cobb*, 916 S.W.2d 915, 916 (Tenn. 1996) ("it is well settled that Tennessee law strongly favors the resolution of all disputes on their merits"); *Norton*, 895 S.W.2d at 322 (emphasizing "the clear policy of this state favoring the adjudication of disputes on their merits").

V. TENN. R. APP. P. 11(b)(3) STATEMENT OF THE FACTS RELEVANT TO THE QUESTIONS PRESENTED FOR REVIEW

In November 2016, the Williamson County Circuit Criminal Court Clerk initiated five civil actions to collect decades-old court costs, taxes, and fines that the Appellant—Mr. Kendall Southall—was assessed on criminal judgments that all became final between 1992 and 2003.[3] Thereafter, Mr. Southall moved to terminate his purportedly outstanding costs because Tenn. Code Ann. § 28-3-110(a)'s ten-year statute of limitations for collecting on judgments had long since expired as to each judgment at issue—the oldest of which had been outstanding without any word from the Respondent-Appellee for nearly twenty-five (25) years.[4]

Upon review, the Trial Court denied Mr. Southall's *Motion to Terminate Costs*.[5] The sole basis for the Trial Court's Order was that the ten-year statute of limitations at issue was "inapplicable as there is no currently pending civil action to collect a judgment from Mr. Southall for his unpaid taxes, costs, and/or fines."[6] Because five civil actions had

[3] *See* R. at 56; R. at 63; R. at 70; R. at 77; R. at 84. *See also* R. at 103-04 ("[O]n November 23, 2016, the Court Clerk of Williamson County Circuit Criminal Court issued an Affidavit of Execution on personal property of the petitioner as relief for the outstanding fines, costs, and taxes.").

[4] R. at 91-102.

[5] R. at 126-28.

[6] R. at 127.

indisputably been initiated against Mr. Southall, however, and because the Respondent-Appellee itself had repeatedly acknowledged as much,[7] Mr. Southall timely appealed to the Court of Criminal Appeals.

After Mr. Southall's Principal Brief was filed in the Court of Criminal Appeals, the Respondent-Appellee moved to dismiss Mr. Southall's appeal on the basis that "Tenn. R. App. P. 3 does not authorize such an appeal." *See* **Exhibit #4** (Appellee's Motion to Dismiss Appeal), p. 1. The Appellee specifically asserted that "Tennessee Rule of Appellate Procedure 3(b) limits a criminal defendant's ability to file an appeal as of right," and it further argued that a motion to terminate costs is not subject to appeal under Tenn. R. App. P. 3(b). *See id. at* p. 2.

In response, Mr. Southall explained that because taxes, costs, and fines that arise out of criminal cases are expressly made collectable "in the same manner as a judgment in a civil action" pursuant to Tenn. Code Ann. § 40-24-105(a),[8] his appeal had specifically been filed under Tenn. R. App. P.

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[7] *See, e.g.*, R. at 106 (noting "the circuit criminal court clerk's actions of attempting to collect on the fines, costs and taxes, as assessed in the above referenced cases") (emphasis added); R. at 104 (referencing "the criminal court's collection actions.") (emphasis added); R. at 124 (arguing that "the actions of the criminal court clerk to collect fines, fees and costs as assessed in criminal cases in state court, is [sic] also a government function.") (emphasis added).

[8] *See* Tenn. Code Ann. § 40-24-105(a) ("Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action. . . . Costs and litigation taxes due may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty, and

3(a)'s civil appeal provision, rather than Tenn. R. App. P. 3(b)'s criminal appeal provision. *See* **Exhibit #5** (Appellant's Response In Opposition to Appellee's Motion to Dismiss), pp. 1-2 ("In his briefing, the Appellant expressly noted that civil standards govern the instant action. *See* [Principal] Brief of Appellant, Section V, p. x (noting that Appellant's appeal is governed by civil standards of review). As such, jurisdiction for this appeal lies pursuant to Tenn. R. App. P. 3(a), which provides that: 'In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right.'"). Accordingly, Mr. Southall contended, he was permitted to appeal the trial court's denial of his motion to terminate "as of right." *See* Tenn. R. App. P. 3(a) ("In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right.").

The Appellant's Motion to Dismiss Mr. Southall's appeal was initially denied with instructions that "that this matter should be fully briefed to ensure adequate review." *See* **Exhibit #6** (Court of Criminal Appeals' Order Denying Appellant's Motion to Dismiss). Accordingly, Mr. Southall's Principal Brief already having been filed, Mr. Southall's Reply Brief noted at

no person shall be imprisoned under this section in default of payment of costs or litigation taxes."). *See also* Tenn. Op. Att'y Gen. No. 06-135 (Aug. 21, 2006) (noting that such collections actions are "governed by Rule 69 of the Rules of Civil Procedure.").

length that his appeal was specifically being prosecuted under Tenn. R. App. P. 3(a). *See* **Exhibit #7** (Appellant's Reply Brief, Section V-A, pp. 5-12). Indeed, Mr. Southall's Reply brief devoted an entire section to the issue and repeatedly made the nature of his Rule 3(a) appeal clear and unambiguous. *See id*. at p. 5 ("Mr. Southall's Notice of Appeal was filed under Tenn. R. App. P. 3(a)"); *id.* at p. 6 (indicating that Mr. Southall's appeal was being prosecuted "under Tenn. R. App. P. 3(a), which governs civil actions."); *id.* at p. 8 ("Tennessee Rule of Appellate Procedure 3(a) provides the appropriate vehicle for appeal."); *id.* at p. 9 ("Tenn. R. App. P. 3(a) . . . actually provides the proper basis for appeal given the subject matter of this case."); *id.* ("Tenn. R. App. P. 3(a) provides the appropriate vehicle for review."); *id*. at p. 10 ("Tenn. R. App. P. 3(a) is the appropriate vehicle for review, and it makes Mr. Southall's appeal available as of right.").

Of note, the availability of an appeal as of right under Tenn. R. App. P. 3(a) was critical to the merits of Mr. Southall's claim, because Tenn. R. App. P. 3(a) affords an appellant a significantly more favorable standard of review than a petition for a writ of certiorari. *Compare* Tenn. R. App. P. 13(d) ("Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the

preponderance of the evidence is otherwise."), *with State ex rel. Moore & Assocs., Inc. v. West*, 246 S.W.3d 569, 574 (Tenn. Ct. App. 2005) ("Under the limited standard of review in common law of writ of certiorari proceedings, courts review a lower tribunal's decision only to determine whether that decision maker exceeded its jurisdiction, followed an unlawful procedure, acted illegally, arbitrarily, or fraudulently, or acted without material evidence to support its decision."). Because a petition for a writ of certiorari is also unavailable if an appeal may be taken pursuant to Tenn. R. App. P. 3, pursuing certiorari when Tenn. R. App. P. 3(a) permitted Mr. Southall's appeal would also have been impermissible. *See* Tenn. Code Ann. § 27-8-101 (providing that certiorari may only be had when "there is no other plain, speedy, or adequate remedy," and that it "does not apply to actions governed by the Tennessee Rules of Appellate Procedure."). *See also* Tenn. Code Ann. § 27-8-102 (stating that "Certiorari lies: . . . Where no appeal is given," and that "[t]his section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.").

In the event that Mr. Southall's appeal could not be taken under Tenn. R. App. P. 3(a), however, Mr. Southall observed and specifically contended that it would be improper to dismiss his appeal on technical grounds based on its title, rather than adjudicating his appeal on its merits according to the

relief sought. *See* **Exhibit #7**, pp. 6-8. In support of that claim, Mr. Southall marshaled a wealth of authority reflecting this Court's longstanding and oft-stated preference for prioritizing substance over form and adjudicating disputes on their merits. *Id.* Specifically, Mr. Southall noted:

> Assuming, for the sake of argument, that Respondent is correct that certiorari is the proper vehicle for appeal, the relief that Respondent demands—dismissal of Mr. Southall's appeal—is plainly improper. Respondent's claim that this Court cannot hear this case because Mr. Southall's Notice of Appeal was not called a "writ of certiorari" is foreclosed by a wealth of authority that commands that *the relief sought* by a pleading—rather than *the title assigned to it*—controls its treatment. *See, e.g., Norton v. Everhart*, 895 S.W.2d 317, 319 (Tenn. 1995) ("the trial court should have treated the petition as one for a writ of certiorari. It is well settled that a trial court is not bound by the title of the pleading, but has the discretion to treat the pleading according to the relief sought."); *Doyle*, 60 S.W.3d at 842 ("A trial court is not bound by the title of a pleading, but rather the court is to give effect to the pleading's substance and treat it according to the relief sought therein."); *Hill v. Hill*, No. M2006-01792-COA-R3CV, 2008 WL 110101, at *3 (Tenn. Ct. App. Jan. 9, 2008) (same).
>
> Accordingly, even if Mr. Southall should have sought review in this Court via certiorari, dismissing his appeal would not be the appropriate remedy. Instead, the proper course of action would be to convert his appeal into a petition for a writ of certiorari and adjudicate it. *Norton*, 895 S.W.2d at 319; *Doyle*, 60 S.W.3d at 842; *Hill*, 2008 WL 110101, at *3. *Cf. Fallin v. Knox Cty. Bd. of Comm'rs*, 656 S.W.2d 338, 342 (Tenn. 1983) ("where, as here, the plaintiff mistakenly employs the remedy of certiorari the court may treat the action as one for declaratory judgment and proceed accordingly, rather than dismiss the action").
>
> Unlike dismissal on technical grounds, this sensible solution also effectuates the judiciary's longstanding preference for resolution

> of disputes on their merits. *See, e.g., Henley v. Cobb*, 916 S.W.2d 915, 916 (Tenn. 1996) ("it is well settled that Tennessee law strongly favors the resolution of all disputes on their merits"); *Childress v. Bennett*, 816 S.W.2d 314, 316 (Tenn. 1991) ("it is the general rule that courts are reluctant to give effect to rules of procedure which seem harsh and unfair, and which prevent a litigant from having a claim adjudicated upon its merits"). *Cf.* Tenn. R. App. P. 17 (providing that if an appeal is improperly filed in the wrong court, the case should not be dismissed, but "transferred to the proper court" instead). And notably, the Respondent has similarly availed itself of this longstanding, common-sense remedy in appeals that have reached this Court through atypical procedural postures. *See, e.g.*, *State v. Whitson*, No. E2010-00408-CCA-R3CD, 2011 WL 2555722, at *1 (Tenn. Crim. App. June 28, 2011) (holding that "[t]he State has no right to appeal via the Tennessee Rules of Appellate Procedure," but "review[ing] the State's claims . . . via the common law writ of certiorari" instead and granting the State relief). Consequently, even if the instant appeal should have been filed as a writ of certiorari as Respondent insists, the proper remedy is not to dismiss Mr. Southall's appeal based on its title, but to adjudicate it based on its content. *Norton*, 895 S.W.2d at 319; *Doyle*, 60 S.W.3d at 842; *Hill*, 2008 WL 110101, at *3; *Fallin*, 656 S.W.2d at 342.

Id.

Upon review, on August 17, 2018, the Court of Criminal Appeals issued an opinion dismissing Mr. Southall's appeal for lack of jurisdiction under Tenn. R. App. P. 3(**b**)—a basis for appeal that Mr. Southall had never raised. *See* **Exhibit #1**. The Court of Criminal Appeals further declined to adjudicate Mr. Southall's petition as a writ of certiorari. *See id.* at 4. Further still, the Court of Criminal Appeals' opinion made no mention whatsoever of Tenn. R. App. P. 3(a), *see id.* at pp. 1-4, which Mr. Southall had argued over

and over again both in motion practice and his briefing was the actual procedural vehicle invoked for his appeal. *See, e.g.,* **Exhibit #5** ("jurisdiction for this appeal lies pursuant to Tenn. R. App. P. 3(a), which provides that: 'In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right.'"); **Exhibit #7**, p. 5 ("Mr. Southall's Notice of Appeal was filed under Tenn. R. App. P. 3(a)"); *id.* at p. 6 (indicating that Mr. Southall's appeal was being prosecuted "under Tenn. R. App. P. 3(a), which governs civil actions."); *id.* at p. 8 ("Tennessee Rule of Appellate Procedure 3(a) provides the appropriate vehicle for appeal."); *id.* at p. 9 ("Tenn. R. App. P. 3(a) . . . actually provides the proper basis for appeal given the subject matter of this case."); *id.* ("Tenn. R. App. P. 3(a) provides the appropriate vehicle for review."); *id.* at p. 10 ("Tenn. R. App. P. 3(a) is the appropriate vehicle for review, and it makes Mr. Southall's appeal available as of right.").

In sum: The Court of Criminal Appeals' opinion reflected unmistakably that it had denied Mr. Southall's appeal based on a claim that he had never even raised, and that it failed to adjudicate his appeal based on the claim he did raise. As a result, Mr. Southall filed a timely Motion to Rehear under Tenn. R. App. P. 39(a), or, in the alternative, to transfer under Tenn. R. App. P. 17. *See* **Exhibit #2**. Upon review, however, the Court of

Criminal Appeals summarily denied Mr. Southall's Motion to Rehear in less than twenty-four (24) hours on the basis that his appeal could not be taken under Tenn. R. App. P. 3(a), either. *See* **Exhibit #3**. This timely application followed.

VI. TENN. R. APP. P. 11(b)(4) STATEMENT OF THE REASONS SUPPORTING REVIEW

This Court should grant review as to the first two questions presented for two reasons:

(1) "[T]he need for the exercise of the Supreme Court's supervisory authority," *see* Tenn. R. App. P. 11(a)(4); and

(2) "[T]he need to secure uniformity of decision[.]" *See* Tenn. R. App. P. 11(a)(1).

Should this Court be interested in reaching the merits of the Appellant's claim as well—rather than remanding his case with instructions that the intermediate court adjudicate his appeal on the merits in the first instance—Mr. Southall's case additionally merits review in order to secure "settlement of important questions of law" and "settlement of questions of public interest." *See* Tenn. R. App. P. 11(a)(2) and Tenn. R. App. P. 11(a)(3).

For each of these reasons, Mr. Southall's application should be granted.

A. RESOLVING WHETHER TENN. R. APP. P. 3 DEPRIVES LITIGANTS OF ANY OPPORTUNITY TO APPEAL AN IMPROPER DENIAL OF A MOTION TO TERMINATE COURT COSTS CALLS FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY AUTHORITY.

"Rule 11 of the Rules of Appellate Procedure sets forth several criteria for this Court to consider when reviewing an application for permission to appeal." *State v. Walls*, 537 S.W.3d 892, 905, n. 7 (Tenn. 2017) (citing Tenn. R. App. P. 11.). "One of these criteria allows this Court to grant permission to appeal if there is a 'need for the exercise of the Supreme Court's supervisory authority.'" *Id.* (quoting Tenn. R. App. P. 11(a)(4)).

The Tennessee Rules of Appellate Procedure "govern procedure in proceedings before the Supreme Court, Court of Appeals, and Court of Criminal Appeals." *See* Tenn. R. App. P. 1. The Rules "are drawn under the authority of Tenn. Code Ann. §§ 16-3-402--16-3-407, and 16-3-601," and they "govern procedure before all the appellate courts in Tennessee and in all proceedings, whether denominated as appeals or otherwise, in both civil and criminal cases." Tenn. R. App. P. 1, Advisory Comm'n Cmt. (Comment amended effective May 17, 2005).

"[I]t is the policy of [the Tennessee Rules of Appellate Procedure] to disregard technicality in form in order that a just, speedy, and inexpensive determination of every appellate proceeding **on its merits** may be obtained." *See id.* (emphasis added). Accordingly, Tenn. R. App. P. 1

specifically instructs that "[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding **on its merits**." *Id.* (emphasis added). This Court's jurisprudential rules are also subject to the same interpretation and application. *See Fayne v. Vincent*, 301 S.W.3d 162, 171 (Tenn. 2009) ("Like the Tennessee Rules of Appellate Procedure, this Court's jurisprudential rules should be interpreted and applied in a way that enables appeals to be considered on their merits.").

For the reasons that follow, the Court of Criminal Appeals' opinion operates to foreclose meaningful appellate review of any erroneous denial of a motion to terminate court costs. Worse, by refusing to convert Mr. Southall's appeal into a petition for a writ of certiorari, the Court of Criminal Appeals' opinion operated to deny Mr. Southall any review on the merits at all. This Court's exercise of its supervisory authority is appropriate as a result.

1. The Rules of Appellate Procedure should not be read to foreclose litigants from appealing the erroneous denial of a motion to terminate court costs.

The Court of Criminal Appeals' opinion dismissing Mr. Southall's appeal for lack of jurisdiction reflects that a trial court's improper denial of a motion to terminate court costs is never subject to appeal under Tenn. R. App. P. 3. Because that result conflicts with both the stated purpose of the

Tennessee Rules of Appellate Procedure and the text of the rules themselves, however, *see* Tenn. R. App. P. 1, this Court's exercise of its supervisory authority is warranted.

In a series of previous cases—every single one of them involving a *pro se* litigant—the Court of Criminal Appeals has held that a denial of a motion to terminate court costs cannot be appealed under Tenn. R. App. P. 3(b).[9] Accordingly, in the instant case, Mr. Southall appealed for that relief pursuant to Tenn. R. App. P. 3(**a**) instead—the Rules' civil appeal provision guaranteeing civil litigants an appeal "as of right." *See id.* *See also* **Exhibit #7** (Appellant's Reply Brief, Section V-A, pp. 5-12).

Mr. Southall's claim for review under Tenn. R. App. P. 3(a) presented a novel question of law—albeit one that is sufficiently rare that it may not rise to the level of an "important" question or a "question[] of public interest." *See* Tenn. R. App. P. 11(a)(2)-(3). Nonetheless, because Tenn. Code Ann. § 40-24-105(a) expressly establishes that collections on judgments in criminal cases are to be treated as "civil actions," Tenn. R. App. P. 3(a) represents a

[9] *See State v. Johnson*, 56 S.W. 3d 44, 44 (Tenn. Crim. App. 2001) ("Christopher Joseph Johnson, pro se."); *State v. Hegel*, No. E2015-00953-CCA-R3-CO, 2016 WL 3078657 (Tenn. Crim. App. May 23, 2016) ("James Frederick Hegel, pro se"); *Boruff v. State*, No. E2010-00772-CCA-R3CO, 2011 WL 846063 (Tenn. Crim. App. Mar. 10, 2011) ("Douglas Boruff, pro se"); *Hood v. State*, No. M2009-00661-CCA-R3-PC, 2010 WL 3244877 (Tenn. Crim. App. Aug. 18, 2010) ("Jonathon C. Hood, Clifton, Tennessee, pro se"); *Lewis v. State*, No. E2014-01376-CCA-WR-CO, 2015 WL 1611296 (Tenn. Crim. App. Apr. 7, 2015) ("Stephen W. Lewis, Wartburg, Tennessee, Pro Se").

more natural and appropriate vehicle for review of a trial court's denial of a motion to terminate court costs. *See generally* **Exhibit #7**, pp. 8-11. *See also* Tenn. Code Ann. § 40-24-105(a) ("Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action."); *id.* ("Costs and litigation taxes due may be collected in the same manner as a judgment in a civil action"); Tenn. Op. Att'y Gen. No. 06-135 (Aug. 21, 2006) (opining that collections actions regarding outstanding fines and court costs from criminal actions are "governed by Rule 69 of the Rules of Civil Procedure."). By holding that an improper denial of a motion to terminate court costs is not subject to appeal under *either* Tenn. R. App. P. 3(b) *or* Tenn. R. App. P. 3(a), however, *see* **Exhibit #1** (Opinion of the Court of Criminal Appeals); **Exhibit #3** (Court of Criminal Appeals' Order Denying Rehearing), the Court of Criminal Appeals' opinion in Mr. Southall's case operates to deny litigants any opportunity to secure appellate review of such claims under the Tennessee Rules of Appellate Procedure at all.

As emphasized previously, however, Tenn. R. App. P. 1 specifically instructs that "[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding on its merits." *Id.* This also represents the Rules' expressly stated policy. *See* Tenn. R. App. P. 1, Advisory

Comm'n Cmt. (Comment amended effective May 17, 2005) ("it is the policy of [the Tennessee Rules of Appellate Procedure] to disregard technicality in form in order that a just, speedy, and inexpensive determination of every appellate proceeding on its merits may be obtained."). By depriving any litigant who is subject to an improper denial of a motion to terminate court costs the opportunity to appeal under the Tennessee Rules of Appellate Procedure, however, the Court of Criminal Appeals' opinion in this case is incompatible with both the Rules' text and purpose. *See id.* The exercise of this Court's supervisory authority is warranted as a result.

2. Review of a trial court's improper denial of a motion to terminate court costs cannot be had under certiorari, and restricting such review to certiorari would also deprive litigants of meaningful appellate review.

The effect of the Court of Criminal Appeals' opinion below is to limit review of an improper denial of a motion to terminate court costs to petitions for a writ certiorari. *See* **Exhibit #1** (Opinion of the Court of Criminal Appeals); **Exhibit #3** (Court of Criminal Appeals' Order Denying Rehearing). Because Tenn. R. App. P. 3(a) permits review of an improper denial of a motion to terminate court costs, however, *see supra* pp. 14-17, reviewing such denials under certiorari would not only be imprudent; it would be ***improper***. *See* Tenn. Code Ann. § 27-8-101 (providing that certiorari may only be had when "there is no other plain, speedy, or adequate

remedy," and that it "does not apply to actions governed by the Tennessee Rules of Appellate Procedure."). *See also* Tenn. Code Ann. § 27-8-102 (stating that "Certiorari lies: . . . Where no appeal is given," and that "[t]his section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.").

Moreover, petitions for writs of certiorari are subject to a significantly more limited—and nigh-insurmountable—standard of review than appeals filed under Tenn. R. App. P. 3(a). *Compare State ex rel. Moore & Assocs., Inc. v. West*, 246 S.W.3d 569, 574 (Tenn. Ct. App. 2005) ("Under the limited standard of review in common law of writ of certiorari proceedings, courts review a lower tribunal's decision only to determine whether that decision maker exceeded its jurisdiction, followed an unlawful procedure, acted illegally, arbitrarily, or fraudulently, or acted without material evidence to support its decision."), *with* Tenn. R. App. P. 13(d) ("Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise."). That standard significantly affects the merits of an appellant's claim and can rarely be overcome even when a trial court has erred. Further, as the Court of Criminal Appeals' opinion in Mr. Southall's

own case reflects, limiting appellate scrutiny to certiorari results in cursory review that cannot be characterized as meaningful. *See* **Exhibit #1** (Opinion of the Court of Criminal Appeals) (holding that although certiorari is available when a trial court's determinations are "contrary to the law," "based upon the record before this court, the interest of justice does not necessitate transforming the appeal into a petition for a writ of certiorari," but declining to explain why).

B. THE COURT OF CRIMINAL APPEALS' OPINION DISMISSING MR. SOUTHALL'S CASE FOR LACK OF JURISDICTION INSTEAD OF ADJUDICATING ITS MERITS IS CONTRARY TO OVERWHELMING AND BINDING PRECEDENT.

Review of the Court of Criminal Appeals' opinion in this case is also essential to secure uniformity of decision. *See* Tenn. R. App. P. 11(a)(1). Here, the Court of Criminal Appeals' opinion dismissing Mr. Southall's appeal without adjudicating its merits not only conflicted with the Rules of Appellate Procedure. *See* Tenn. R. App. P. 1 ("These rules shall be construed to secure the just, speedy, and inexpensive determination of **every proceeding on its merits**.") (emphasis added). Instead, the Court of Criminal Appeals' opinion also conflicted with extensive precedent from this Court establishing that courts have a "duty to convert [a litigant's pleading] to its proper form" and adjudicate it on its merits according to the relief sought. *See Norton*, 895 S.W.2d at 319. *See also id.* ("[T]he trial court should

have treated the petition as one for a writ of certiorari. It is well settled that a trial court is not bound by the title of the pleading, but has the discretion to treat the pleading according to the relief sought.") (citing *Fallin v. Knox County Board of Commissioners*, 656 S.W.2d 338, 342 (Tenn.1983); *State v. Minimum Salary Dep't. of A.M.E. Church*, 477 S.W.2d 11, 12 (Tenn. 1972)).

A wealth of additional precedent confirms this view. Specifically, time and again, this Court and our intermediate courts have held that courts must avoid exalting form over substance; that they should treat pleadings according to the relief sought, rather than according to their title; and that courts must always favor the resolution of cases on their merits. *See, e.g., Estate of Doyle v. Hunt*, 60 S.W.3d 838, 842 (Tenn. Ct. App. 2001) ("A trial court is not bound by the title of a pleading, but rather the court is to give effect to the pleading's substance and treat it according to the relief sought therein."); *Hill v. Hill*, No. M2006-01792-COA-R3CV, 2008 WL 110101, at *3 (Tenn. Ct. App. Jan. 9, 2008) (same); *State v. Whitson*, No. E2010-00408-CCA-R3CD, 2011 WL 2555722, at *1 (Tenn. Crim. App. June 28, 2011) (holding that "[t]he State has no right to appeal via the Tennessee Rules of Appellate Procedure," but "review[ing] the State's claims . . . via the common law writ of certiorari" instead and granting the State relief); *Cobb v. Beier*, 944 S.W.2d 343, 346 (Tenn. 1997) ("it is exalting form over

substance to dismiss an appeal on the sole basis that counsel failed to serve a copy of the notice of appeal on the appellate court clerk. . . . To hold otherwise would impede the search for justice."); *Childress v. Bennett*, 816 S.W.2d 314, 316 (Tenn. 1991) ("it is the general rule that courts are reluctant to give effect to rules of procedure which seem harsh and unfair, and which prevent a litigant from having a claim adjudicated upon its merits"); *Jones v. Prof'l Motorcycle Escort Serv., L.L.C.*, 193 S.W.3d 564, 573 (Tenn. 2006) (holding that courts must not "exalt[] form over substance to deprive a party of his day in court and frustrat[e] the resolution of the litigation on the merits."); *In re Akins*, 87 S.W.3d 488, 495 (Tenn. 2002) ("we . . . avoid exalting form over substance."); *King v. Pope*, 91 S.W.3d 314, 325 (Tenn. 2002) ("To do so would exalt form over substance, something which . . . this Court refuses to do."); *City of Chattanooga v. Davis*, 54 S.W.3d 248, 260 (Tenn. 2001) (overruling a prior decision that "exalted technical form over constitutional substance in a manner rarely seen elsewhere."); *State v. Henning*, 975 S.W.2d 290, 298 (Tenn. 1998) ("To hold otherwise would exalt form over substance."); *Henley v. Cobb*, 916 S.W.2d 915, 916 (Tenn. 1996) ("it is well settled that Tennessee law strongly favors the resolution of all disputes on their merits"); *Norton*, 895 S.W.2d at 322 (Tenn. 1995) (emphasizing "the clear policy of this state favoring the adjudication of

disputes on their merits").

The Court of Criminal Appeals' opinion in the instant case is irreconcilable with the above authority, and it disregarded all of it. Mr. Southall was deprived of a resolution of his appeal on its merits as a consequence. *See* **Exhibit #1** (Opinion of the Court of Criminal Appeals); **Exhibit #3** (Court of Criminal Appeals' Order Denying Rehearing). Review under this Court's supervisory authority—including the option of summarily reversing the Court of Criminal Appeals' judgment with instructions to adjudicate the merits of Mr. Southall's appeal—is warranted as a result.

C. THE MERITS OF THE APPELLANT'S CLAIM PRESENT "IMPORTANT QUESTIONS OF LAW" AND "QUESTIONS OF PUBLIC INTEREST."

Were this Court to accept review and adjudicate the Appellant's claim on its merits notwithstanding the Court of Criminal Appeals' failure to do so, it would find that this case presents "important questions of law" and "questions of public interest." *See* Tenn. R. App. P. 11(a)(2); Tenn. R. App. P. 11(a)(3). Here, the merits of the Appellant's claim present the important question of whether the Government is *ever* time-barred—even twenty, thirty, or a hundred years after the fact—from initiating an action to collect supposedly outstanding court costs, taxes, or fines. That question also carries special importance in the instant case, given that the collector at issue was plainly motivated by retaliatory purposes and had a significant profit

motive.[10] *See Harmelin v. Michigan*, 501 U.S. 957, 978, n. 9 (1991) ("it makes sense to scrutinize governmental action more closely when the State stands to benefit.") (Scalia, J., plurality opinion). *See also Anderson Cty. Bd. of Educ. v. Nat'l Gypsum Co.*, 821 F.2d 1230, 1233 (6th Cir. 1987) (holding that with respect to county- and municipal-level exemptions from general statutes of limitations, Tennessee's cases "can be read to require that some state interest recognized by state legislation must be at stake beyond that of simply having more money in the hands of a subordinate body.").

The plain text of Tenn. Code Ann. § 28-1-113's potential exemption to the ten-year statute of limitations for collecting on judgments also reflects that it applies only to "actions brought by the state of Tennessee," rather than subordinate governmental bodies. *See* Tenn. Code Ann. § 28-1-113 ("This title does not apply to actions brought by the state of Tennessee, unless otherwise expressly provided."). Concededly, every opinion interpreting Tenn. Code Ann. § 28-1-113 has not uniformly adhered to the plain text of the statute. *But see Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000) ("courts must construe a statute as it is written."). *See also Miller v. Childress*, 21 Tenn. 320, 321–22 (1841) ("Where a statute is plain

[10] *See* R. at 92 (noting that the collections actions at issue—all of which had been dormant for decades—came on the heels of the Appellant successfully challenging a forfeiture action in Williamson County).

and explicit in its meaning, and its enactment within the legislative competency, the duty of the courts is simple and obvious, namely, to say *sic lex scripta*, and obey it."). Nonetheless, the proper interpretation of Tenn. Code Ann. § 28-1-113 is ripe for re-examination, because there is little doubt that the essential doctrine underlying it—*nullum tempus occurrit regi*—is a relic of sovereign immunity that has itself been substantially restricted. For its part, Tenn. Code Ann. § 28-1-113 should be restricted in kind.

Here, the Appellant has contended—with substantial basis—that the presumption in favor of enforcing statutes of limitations should control, because the doctrine of *nullum tempus occurrit regi* is significantly outmoded and contravenes several countervailing public policies. Consequently—particularly where taxation and criminal statutes are concerned—Tenn. Code Ann. § 28-1-113 should be narrowly construed in favor of both taxpayers and repose.

"The common law doctrine of *nullum tempus occurit regi* . . . is literally translated as 'time does not run against the king.'" *Hamilton Cty. Bd. of Educ. v. Asbestospray Corp.*, 909 S.W.2d 783, 785 (Tenn. 1995), *as clarified on reh'g* (Nov. 20, 1995). It is, therefore, little more than "a vestigial survival of the prerogative of the Crown." *Guar. Tr. Co. of New York v. United States*, 304 U.S. 126, 132 (1938). As a result, especially in a jurisdiction like

Tennessee, which is governed by a Constitution that is uniquely committed to notions of popular sovereignty, the doctrine of *nullum tempus occurit regi* can properly be regarded as something of an anachronism. *See* Tenn. Const. art. I, § 1 ("That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.").

The continuing justification for the rule that "the sovereign is exempt from the consequences of its laches"[11] is "that the public should not suffer because of the negligence of its officers and agents." *Hamilton*, 909 S.W.2d at 785 (quotation omitted). Critically, however, that justification is grossly out of step with modern conceptions of democratic governance and popular sovereignty, which has led state after state to abolish or substantially eliminate the doctrine as an obsolete relic of sovereign immunity.[12] Still

[11] *Guar. Tr. Co. of New York*, 304 U.S. at 132.

[12] *See Shootman v. Dep't of Transp.*, 926 P.2d 1200, 1206 (**Colo. 1996**) ("Having abrogated sovereign immunity, and having recognized that *nullum tempus* is simply an aspect of sovereign immunity, we have supplied the reasoning that leads directly to our conclusion today that the doctrine of *nullum tempus* no longer applies to the State.") (internal citations omitted); **Fla. Stat. Ann. § 95.011** ("A civil action or proceeding, called "action" in this chapter, including one brought by the state, a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or officer of any of them, or any other governmental authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is

other jurisdictions have restricted the application of the doctrine solely to state entities, and thus, would not apply it to the collections actions initiated by the Williamson County Criminal Court Clerk in the Appellant's case.[13] For

prescribed elsewhere in these statutes, within the time prescribed elsewhere."); **Ga. Code Ann. § 9-3-1** ("Except as otherwise provided by law, the state shall be barred from bringing an action if, under the same circumstances, a private person would be barred."); **Ky. Rev. Stat. § 413.150** ("The limitations prescribed in this chapter shall apply to actions brought by or in the name of the Commonwealth the same as to actions by private persons, except where a different time is prescribed by statute."); **Mass. Gen. Laws. c. 260, § 18** ("The limitations of the preceding sections of this chapter, and of section thirty-two so far as applicable to personal actions, shall apply to actions brought by or for the commonwealth."); **Minn. Stat. § 541.01** ("Such limitation shall apply to actions by or in behalf of the state and the several political subdivisions thereof"); **MO Rev Stat § 516.360** ("The limitations prescribed in sections 516.010 to 516.370 shall apply to actions brought in the name of this state, or for its benefit, in the same manner as to actions by private parties."); **Mont. Code Ann. § 27-2-103** ("The limitations prescribed in part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties."); **Neb. Code § 25-218** ("very claim and demand on behalf of the state, except for revenue, or upon official bonds, or for loans or money belonging to the school funds, or loans of school or other trust funds, or to lands or interest in lands thereto belonging, shall be barred by the same lapse of time as is provided by the law in case of like demands between private parties."); *New Jersey Educ. Facilities Auth. v. Gruzen P'ship*, 592 A.2d 559, 561 (**N.J. 1991**) ("Having yielded the greatest aspect of sovereign immunity, immunity from any suit at all, it would be anomalous in the extreme not to conclude that the sovereign who can now be sued should not have to bring its own suit in a timely manner."); **N.Y. C.P.L.R. § 201** ("An action, including one brought in the name or for the benefit of the state, must be commenced within the time specified in this article unless a different time is prescribed by law or a shorter time is prescribed by written agreement."); **N.D. Cent. Code Ann. § 28-01-23** ("The limitations prescribed in this chapter apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties."); **S.C. Code Ann. § 15-3-620** ("The limitations prescribed by this article shall apply to actions brought in the name of the State or for its benefit in the same manner as to actions by private parties . . . ."); **S.D. Codified Laws § 15-2-2** ("The limitations prescribed in this chapter and chapter 15-3 shall apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties, unless otherwise specifically prescribed by law."); **W. Va. Code Ann. § 55-2-19** ("Every statute of limitation, unless otherwise expressly provided, shall apply to the State."); **Wis. Stat. Ann. § 893.87** ("Any action in favor of the state, if no other limitation is prescribed in this chapter, shall be commenced within 10 years after the cause of action accrues or be barred.").

[13] *See, e.g., Board of School Com'rs of Mobile Co. v. Architects Group, Inc.*, 752 So.2d 489, 492 (**Ala. 1999**) ("we hold that the statutes of limitations at issue here, §§ 6–2–

this Court's convenience, a state-by-state compendium of law summarizing the application of the doctrine across U.S. jurisdictions accompanies this brief as **Exhibit #8**. For its part, the status of *nullum tempus occurrit regi* in Tennessee is described as "unclear." *See id.* at p. 15.

Importantly, given Tennessee law's strong statutory presumptions favoring taxpayers, a narrow construction of Tenn. Code Ann. § 28-1-113 is also particularly appropriate where, as here, the government's collections actions involve a claim that taxes are outstanding. *See, e.g., Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992) ("Taxation statutes must be liberally construed in favor of the taxpayer and strictly construed against the taxing authority."). *See also Crown Enterprises, Inc. v. Woods*, 557 S.W.2d 491, 493 (Tenn. 1977) (noting the "basic canon of

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34(4) and 6–2–38(l), Ala.Code 1975, apply to county boards of education and that those boards are not exempt from the operation of those statutes under the doctrine of *nullum tempus occurrit reipublicae*."); *Mayor & Council of Wilmington v. Dukes*, 157 A.2d 789, 795 (**Del. 1960**) ("We think that no inference may be drawn from this case to the effect that this Court would be willing to extend the doctrine of sovereign immunity to cover actions by municipalities which would otherwise be barred by the statute of limitations; quite the contrary."); *Bannock Cty. v. Bell*, 65 P. 710, 712 (**Ida. 1901**) ("the statute of limitations runs against a municipal corporation"); *State v. Stuart*, 91 N.E. 613, 615 (**Ind. 1910**) ("The maxim *nullum tempus occurrit regi* only applies in favor of the sovereign power, and has no application to municipal corporations deriving their powers from the sovereign, although their powers in a limited sense are governmental."); *Inhabitants of Topsham v. Blondell*, 19 A. 93, 94 (**Me. 1889**) ("the overwhelming weight of authority holds that municipal corporations, even in their public character, are not so vested with the rights and privileges of sovereignty as to be within the protection of the maxim *nullum tempus*"); *State, Dep't of Transp. v. Sullivan*, 527 N.E.2d 798, 800 (**Ohio 1988**) ("the rule is an attribute of sovereignty only, it does not extend to townships, counties, school districts or boards of education, and other subdivisions of the state, nor, at least in some cases, to municipalities.").

construction that if there are doubts or ambiguities contained in the statute, they must be resolved in favor of the taxpayer.").

The doctrine also makes even less sense in criminal cases, which are almost uniformly governed by statutes of limitations and make exceptions only for crimes punishable by death or life imprisonment.[14] Given this context, it is difficult to imagine how the Government's interest in collecting decades-old court costs could outweigh the Government's interest in prosecuting, for example, Class A felonies like Aggravated Rape. *See* Tenn. Code Ann. § 39-13-502(b) ("Aggravated rape is a Class A felony."); Tenn. Code Ann. § 40-2-101(b)(1) ("Prosecution for a felony offense shall begin within: (1) Fifteen (15) years for a Class A felony"). Put differently: The Government's interests in collecting court costs, taxes, and fines from criminal prosecutions cannot seriously be considered more important than the Government's interests in criminal prosecutions themselves. As such, the notion that *nullum tempus occurrit regi* permits county clerks to collect decades-old *costs*—but does not permit the State of Tennessee to prosecute decades-old *crimes*—should be rejected as an absurdity. *See, e.g., State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000) ("we will not apply a particular

[14] Tenn. Code Ann. § 40-2-101(a) ("an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense is committed."); Tenn. Code Ann. § 40-2-101(b) (providing statutes of limitations in all other felony cases).

interpretation to a statute if that interpretation would yield an absurd result.")

Finally, given that myriad collateral rights of citizenship are at stake when criminal court costs are outstanding, Tenn. Code Ann. § 28-1-113 should also be construed narrowly in favor of the long-recognized countervailing interests in the fairness, justice, stability, reliability, and repose that statutes of limitations ensure. As this Court held in *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 456 (Tenn. 2012):

> Statutes of limitations promote fairness and justice. . . . They are based on the presumption that persons with the legal capacity to litigate will not delay bringing suit on a meritorious claim beyond a reasonable time. We have frequently pointed out that statutes of limitations (1) promote stability in personal and business relationships, (2) give notice to defendants of potential lawsuits, (3) prevent undue delay in filing lawsuits, (4) avoid the uncertainties and burdens inherent in pursuing and defending stale claims, and (5) ensure that evidence is preserved and facts are not obscured by the lapse of time or the defective memory or death of a witness[.] Accordingly, the courts construe exceptions to statutes of limitations carefully to assure that they are not extended beyond their plain meaning.

Id. (internal citations and quotations omitted).

Where criminal court costs are at issue, these interests are arguably at their zenith. Outstanding criminal court costs prevent defendants from exercising several vital, collateral rights of citizenship, including, without

limitation: (1) the right to vote,[15] (2) the right to sue,[16] (3) the right to an expungement,[17] and (4) the right to drive an automobile.[18] Given the self-evident importance of these rights, absolute certainty as to whether a citizen may lawfully exercise them is essential. As such, enabling the Government to retroactively prevent a citizen from exercising these rights and others by untimely initiating actions to collect long-dormant, decades-old court costs would risk abuse, encourage retaliation, and create chaos. Thus, particularly where actions involving taxpayers and outstanding court costs from criminal cases are concerned, this Court should accept review of whether the doctrine of *nullum tempus occurrit regi* should be narrowly construed in favor of both taxpayers and repose.

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[15] Tenn. Code Ann. § 40-29-202(2) ("a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored, unless the person has paid all court costs assessed against the person at the conclusion of the person's trial, except where the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application.").

[16] Tenn. Code Ann. § 41-21-812(a) ("Except as provided by subsection (b), on notice of assessment of any fees, taxes, costs and expenses under this part, a clerk of a court may not accept for filing another claim by the same inmate until prior fees, taxes, costs and other expenses are paid in full."). *See also Hughes v. Tennessee Bd. of Prob. & Parole*, 514 S.W.3d 707, 710 (Tenn. 2017).

[17] Tenn. Code Ann. § 40-32-101(g)(2)(C)(i) (requiring "[p]ayment of all fines, restitution, court costs and other assessments" before a petitioner will be eligible).

[18] Tenn. Code Ann. § 40-24-105(b)(1) ("A license issued under title 55 for any operator or chauffeur shall be revoked by the commissioner of safety if the licensee has not paid all litigation taxes, court costs, and fines assessed as a result of disposition of any offense under the criminal laws of this state within one (1) year of the date of disposition of the offense.").

VII. CONCLUSION

For the foregoing reasons, the Appellant's Rule 11 application should be **GRANTED**.

Respectfully submitted,

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VIII. CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2018, a true and exact copy of the foregoing was mailed via UPS, postage prepaid, by email, and/or via the Court's e-filing system to the following:

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By: /s/ Daniel A. Horwitz
Daniel A. Horwitz, Esq.

IX. APPENDIX OF EXHIBITS

Exhibit #1: Opinion of the Court of Criminal Appeals

Exhibit #2: Appellant's Motion for Rehearing Under Tenn. R. App. P. 39(a), Or, In the Alternative, Motion to Transfer Under Tenn. R. App. 17

Exhibit #3: Court of Criminal Appeals' Order Denying Rehearing

Exhibit #4: Appellee's Motion to Dismiss Appeal

Exhibit #5: Appellant's Response In Opposition to Appellee's Motion to Dismiss

Exhibit #6: Court of Criminal Appeals' Order Denying Appellant's Motion to Dismiss

Exhibit #7: Appellant's Reply Brief

Exhibit #8: *Nullum Tempus Occurrit Regi* Compendium of Law in U.S. Jurisdictions