

IN THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO. 25CO1:16-cr-00624

ROBERT SHULER SMITH

DEFENDANT

MOTION FOR ENTRY OF *NOLLE PROSEQUI* ORDER

COMES NOW, the Plaintiff, the State of Mississippi, by and through the Office of the Attorney General, and requests this honorable Court to enter an Order of *Nolle Prosequi* (in the form set forth in the attached Order) in this matter. In support of its motion for *nolle prosequi* of the charges in this Court, the State of Mississippi would show the Court the following:

1. The defendant has raised the applicability of Article 6, § 175 of the Mississippi Constitution and alleges that he is answerable for the charges currently pending against him only by means of presentment or indictment by a grand jury. Without question, the circumstances in this case involving charges of criminal conduct against a district attorney in the exercise of his duties as district attorney present a unique situation. If the defendant is correct in his interpretation of § 175, then the State may not proceed on these charges absent presentment of an indictment against the defendant.

2. Out of an abundance of caution, the State of Mississippi elects to seek a *nolle prosequi* of the charges presently pending in the County Court of Hinds County to avoid the conflict which could be presented by the County Court and the Circuit Court having jurisdiction over the same case or charges at the same time.

3. Moreover, as the State of Mississippi has made clear in other filings which are incorporated herein by reference, the manner in which the State seeks to proceed with this matter requires proceeding in a manner which only the circuit court, not the county court, would have jurisdiction to hear and decide the case. Additionally, if the county court were to proceed on the currently pending misdemeanor charges, the county court would not have full authority to impose the penalty set forth in the criminal statute, Miss. Code Ann., § 97-11-3, which mandates a penalty of a fine, removal from office, and prohibition from thereafter filling any office of profit or honor in the state. Thus, for this additional reason, the State moves for entry of an Order of *Nolle Prosequi* in this case.

Wherefore, premises considered, the State of Mississippi respectfully requests this honorable Court to enter an Order of *Nolle Prosequi* in this case and tenders a proposed Order to the Court for its consideration along with this motion.

THIS the 2nd day of September, 2016.

Respectfully submitted,

JIM HOOD, MISSISSIPPI ATTORNEY GENERAL

s/ Robert G. Anderson

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CERTIFICATE OF SERVICE

I, Robert G. Anderson, hereby certify that I have this day served a copy of the above and foregoing Motion for Entry of *Nolle Prosequi* upon Jim Waide, Attorney for the Defendant, Robert Shuler Smith, at his usual e-mail address of waide@waidelaw.com.

THIS, the 2nd day of September, 2016.

s/ Robert G. Anderson
Robert G. Anderson
Special Assistant Attorney General
MS Bar No. 1589

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ORDER OF NOLLE PROSEQUI

THIS DAY this matter came before the Court on the Motion of the State of Mississippi to enter a *Nolle Prosequi* in the above styled and numbered cause, and the Court, being fully advised in the premises, is of the opinion that the Motion should be sustained, based upon the following, to wit:

The defendant has raised the applicability of Article 6, § 175 of the Mississippi Constitution and alleges that he is answerable for the charges currently pending against him only by means of presentment or indictment by a grand jury. Without question, the circumstances presented in this case involving charges of criminal conduct against a district attorney in the exercise of his duties as district attorney present a unique situation. If the defendant is correct in his interpretation of § 175, then the State may not proceed on these charges absent presentment of an indictment against the defendant.

IT IS THEREFORE, ORDERED AND ADJUDGED that a *Nolle Prosequi* be, and the same is hereby entered in this cause, without prejudice to the right of the State to present the matter to the Grand Jury for the First Judicial District of Hinds County, Mississippi.

SO ORDERED AND ADJUDGED, this the _____ day of September, 2016.

JAMES BELL, Special County Court Judge