

APPENDIX D

IN THE SUPREME COURT OF ALABAMA



March 16, 2018

1170387

Ex parte M. P. F. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: M. P. F. v. State of Alabama) (Tallapoosa Circuit Court, Alexander City Division: CC-13-165.62; Criminal Appeals : CR-16-1058).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on March 16, 2018:

Writ Denied. No Opinion. Wise, J. - Stuart, C.J., and Bolin, Shaw, and Sellers, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 16th day of March, 2018.

A handwritten signature in cursive script that reads "Julia Jordan Weller".

Clerk, Supreme Court of Alabama

APPENDIX C

**COURT OF CRIMINAL APPEALS
STATE OF ALABAMA**

D. Scott Mitchell
Clerk
Gerri Robinson
Assistant Clerk



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January 12, 2018

CR-16-1058

M. P. F. v. State of Alabama (Appeal from Alexander City Division, Tallapoosa Circuit Court: CC13-165.62)

NOTICE

You are hereby notified that on January 12, 2018, the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

D. Scott Mitchell

D. Scott Mitchell, Clerk
Court of Criminal Appeals

cc: Hon. Ray D. Martin, Circuit Judge
Hon. Patrick Craddock, Circuit Clerk
Michael Patrick Ford, Pro Se
Robin Denise Scales, Asst. Atty. Gen.

APPENDIX B

REL: 12/08/2017

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

Court of Criminal Appeals

State of Alabama

Judicial Building, 300 Dexter Avenue

P. O. Box 301555

Montgomery, AL 36130-1555

MARY BECKER WINDOM
Presiding Judge
SAMUEL HENRY WELCH
J. ELIZABETH KELLUM
LILES C. BURKE
J. MICHAEL JOINER
Judges

RELEASED

CLERK
ALA COURT CRIMINAL APPEALS

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MEMORANDUM

CR-16-1058

Tallapoosa Circuit Court CC-13-165.62

M.P.F. v. State of Alabama

KELLUM, Judge.

M.P.F. appeals the circuit court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he attacked his 2013 guilty-plea convictions for 1 count of incest, 1 count of second-degree sexual abuse, 3 counts of second-degree sodomy, 5 counts of sexual abuse of a child less than 12 years old, 1 count of second-degree theft of property, and 1 count of tampering with physical evidence, and his resulting sentences totaling 87 years' imprisonment. This Court dismissed M.P.F.'s direct appeal for failure to pay the docket fee and issued a

certificate of judgment on May 15, 2014 (case no. CR-13-0621).

On April 12, 2017, M.P.F. filed this, what appears to be his third, Rule 32 petition. In his petition, M.P.F. alleged that (1) his convictions were obtained by unlawful or involuntary guilty pleas, because, he said, the circuit court failed to advise him of the nature and elements of the charges; (2) he was denied the effective assistance of counsel, because, he said, his counsel advised him to enter blind pleas and stated that the judge would not sentence him to more than 15 years' imprisonment; and (3) his sentences exceeded the maximum authorized by law, because, he said, the circuit court failed to advise him of the correct range of punishment for his two misdemeanor crimes, and failed to inform him that he would be subject to the mandatory minimum sentences in § 13A-5-6(a)(6), Ala. Code 1975, for his crimes against children less than 12 years old.¹ M.P.F. also argued that he was entitled to equitable tolling. On May 26, 2017, the State filed a motion to dismiss M.P.F.'s petition, arguing that all of M.P.F.'s claims were precluded by Rules 32.2(a), (b), (c), and/or (d). On June 21, 2017, M.P.F. filed a reply to the State's motion. That same day, the circuit court issued an order granting the State's motion, finding that the petition was successive, that the petition was time-barred, that the claims were insufficiently pleaded, and that the claims lacked merit.

On appeal, M.P.F. reasserts the claims raised in his petition, including his argument that he was entitled to equitable tolling, and he argues that the circuit court erred in denying his petition. We disagree.

As for M.P.F.'s claims that his trial counsel was ineffective and that his guilty pleas were involuntary, it is well settled "that claims of ineffective assistance of counsel and challenges to the voluntariness of a guilty plea may be presented for the first time in a timely filed Rule 32 petition." Murray v. State, 922 So. 2d 961, 965 (Ala. Crim.

¹M.P.F. also argued that the above-three claims constituted newly discovered facts. However, newly discovered claims do not meet the requirements of newly discovered facts under Rule 32.1(e).

7
App. 2005). However, neither a claim of ineffective assistance of counsel nor a challenge to the voluntariness of a guilty plea is jurisdictional. See Burnett v. State, 155 So. 3d 304, 307 (Ala. Crim. App. 2013) ("A claim alleging ineffective assistance of counsel is not jurisdictional."); and Fincher v. State, 837 So. 2d 876, 878 (Ala. Crim. App. 2002) ("Claims relating to the voluntariness of guilty pleas are not jurisdictional."). In other words, although not generally subject to the preclusions in Rules 32.2(a)(3) and (a)(5), claims of ineffective assistance of counsel and challenges to the voluntariness of a guilty plea are subject to the preclusions in Rules 32.2(b), (c), and (d). Therefore, these claims in M.P.F.'s petition are time-barred by Rule 32.2(c) because M.P.F.'s petition was filed well after the limitations period had expired.

Likewise, M.P.F. is not entitled to relief on his claim that his sentences exceeded the maximum authorized by law. Although couched in jurisdictional terms of an illegal sentence, M.P.F.'s claim is nothing more than a challenge to the voluntariness of his guilty pleas. See Fincher v. State, 837 So. 2d at 878 ("Claims relating to the voluntariness of guilty pleas are not jurisdictional.") Accordingly, the circuit court properly found this claim was also time-barred under Rule 32.2(c), Ala. R. Crim. P.

Moreover, M.P.F.'s assertion of equitable tolling in his petition, which he pursues in his brief on appeal, is unavailing. "[E]quitable tolling is available in extraordinary circumstances that are beyond the petitioner's control and that are unavoidable even with the exercise of diligence." Ex parte Ward, 46 So. 3d 888, 897 (Ala. 2007). M.P.F. failed to plead in his petition sufficient extraordinary circumstances to warrant the application of equitable tolling. M.P.F. (alleged that he was unable to acquire the transcripts of his guilty plea colloquy and sentencing hearing for three years. However, (M.P.F.'s difficulty obtaining these items does not excuse his untimely filing of his Rule 32 petition) Indeed, postconviction petitioners are not entitled to free transcripts to prosecute a Rule 32 petition. See e.g., Ex parte Powell, 641 So. 2d 772, 777 (Ala. 1994). Therefore, M.P.F. is not entitled to the benefit of equitable tolling.

Page 11

We note that M.P.F. also argues on appeal that the

circuit court erred by failing to properly consider his reply to the State's response. M.P.F. did not file a postjudgment motion raising this issue, but instead raises it for the first time on appeal. "The general rules of preservation apply to Rule 32 proceedings." Boyd v. State, 913 So. 2d 1113, 1123 (Ala. Crim. App. 2003). Therefore, the issue was not properly preserved for review and will not be considered by this Court.

Rule 32.7(d), Ala. R. Crim. P., authorizes the circuit court to summarily dismiss a petitioner's Rule 32 petition

"[i]f the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings...."

See also Hannon v. State, 861 So. 2d 426, 427 (Ala. Crim. App. 2003); Cogman v. State, 852 So. 2d 191, 193 (Ala. Crim. App. 2002); Tatum v. State, 607 So. 2d 383, 384 (Ala. Crim. App. 1992). Because the claims in M.P.F.'s petition were time-barred, summary disposition of M.P.F.'s Rule 32 petition was appropriate.

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Welch, Burke, and Joiner, JJ., concur.

**Additional material
from this filing is
available in the
Clerk's Office.**