

(APPENDIX A)

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COURT OF CRIMINAL APPEALS
STATE OF ALABAMA

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August 17, 2018

CR-17-0737

Jonathan Yancey v. State of Alabama (Appeal from Lee Circuit Court: CC15-646.60)

NOTICE

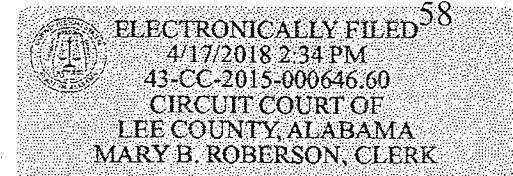
You are hereby notified that on August 17, 2018, the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

D. Scott Mitchell

D. Scott Mitchell, Clerk
Court of Criminal Appeals

cc: Hon. Jacob A. Walker, III, Circuit Judge
Hon. Mary B. Roberson, Circuit Clerk
Jonathan Yancey, Pro Se
John J. Davis, Asst. Attorney General



IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

APPENDIX B

STATE OF ALABAMA)
)
V.) Case No.: CC-2015-000646.60
)
YANCEY JONATHAN)
Defendant.)

ORDER

On or about February 24, 2016, Mr. Jonathan Yancey (Yancey) was found guilty of the following:

CC-2015-646 Count 1: Failing to Notify Local Law Enforcement He Transferred Residences as an Adult Sex offender

CC-2015-646 Count 2: Establishing a Residence Near a Public School as an Adult Sex Offender.

Yancey fell under the Alabama Sex Offender Registration and Community Notification Act (ASORCNA) due to being convicted of Rape II in 1987 in the Circuit Court of Lee County, Alabama. As a habitual offender, Yancey was sentenced to 28 years in the Alabama State Penitentiary and given 502 days jail credit on May 23, 2016.

While Yancey filed an appeal on March 8, 2016, his counsel filed an appeal on his behalf on June 21, 2016. The Court of Criminal Appeals affirmed this Court's judgment on February 3, 2017. Yancey then filed a Petition For Relief From Conviction or Sentence Pursuant to Rule 32 on October 3, 2017 and his motion to proceed *in forma pauperis* was partially granted by this Court on October 9, 2017. After a January 3, 2018 order from this Court giving the State 30 days to file a Motion in response to the Petition, Yancey filed a Petition for An Evidentiary Hearing. Both the State and Yancey have filed Motions and Briefs on the relevant issues.

Arguments

Yancey cites the following as the grounds for his petition:

1. The Constitution of the United States of Alabama Requires a new trial a new sentence or other relief as the conviction was obtained by a violation of the protection of double jeopardy
2. Denial of effective assistance of counsel

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3. Newly discovered material facts exist which require the conviction or sentence be vacated by the court.

Yancey does not argue or provide any additional information regarding newly discovered material facts. The great weight of Yancey's claims rest upon his arguments regarding ASORCNA.

In response, the State denies every allegation set forth in Yancey's petition and further argues that he has not with required specificity set out grounds entitling him to relief under Rule 32.1. As such, the District Attorney is not required to address allegations which do not state a claim for which relief can be granted. The State further argues that Yancey is precluded from relief pursuant to Rule 32.2 due to the following:

1. The petition is not meritorious on its face and fails to state a claim for which relief can be granted.
2. Claims in the petition were raised at trial.
3. Claims could have been raised on direct appeal or by post-trial motion under Rule 24.
4. Said issues could have been raised at trial but were not.
5. No material fact or law exists which would entitle the petitioner to relief under Rule 32.
6. His cause of action is moot.
7. Petition was not raised within the allowable period of time.

The state addresses the claims regarding the constitutionality of ASORCNA by citing *Smith v Doe* 123 S.Ct. 1140 (2003) and the Alabama State Legislature's intent when passing the law.

Analysis

Before individually addressing Yancey's claims, it is vital to note the overall issue of ASORCNA being regulatory scheme and not a criminal law or procedure. There are a number of factors that the Courts consider when analyzing if a law is a regulatory scheme or a criminal law/procedure. The following are factors cited in *McGuire v Strange* 83 F.Supp.3d 1231 (M.D.Ala 2015) that hold ASORCNA is civil regulatory scheme.

1. The expressed legislative intent of imposing certain restrictions on those classified as "sex offenders" such as monitoring, tracking, etc. is not to punish the offender but to protect the public and promote the safety of children.¹
2. While the scheme does have criminal penalties for violations, such penalties do not make the scheme punitive. In *Smith*, the Court notes that "location and labels are not dispositive factors" and that invoking the criminal process in a regulatory scheme did not make Alaska's SORNA provisions punitive.²

¹ *McGuire v Strange* 83 F.Supp.3d 1231 (M.D.Ala 2015) at 1246

² *id.* 1247

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3. A two-step process in such analysis as laid out in *Smith* examines two factors: expressed legislative intent and the effects of the scheme. The Alabama legislature has expressly stated that this is a regulatory scheme and vests great power with regulatory agencies such as the Department of Public Safety. This meets the first prong of this test.

The second is the issue of the effects of the scheme.³ *McGuire* relies on the *Smith* ruling's *Mendoza-Martinez*⁴ analysis to arrive at the conclusion that ASORCNA's scheme, while comprehensive, is not one that has overall punitive effects.⁵

4. Finally, to find that a law is "suddenly" now a criminal scheme when it has been routinely found to be a civil one is an "end run" around prior decisions set forth by the court.⁶

While Yancey's petition lists multiple claims for relief, his argument relies entirely on the issues relating to his conviction under ASORCNA. Yancey's claims can be summarized as: claim that due process rights were violated, protections from *ex post facto* laws and double jeopardy were violated, and ineffective assistance of counsel.

1. Violation of Due Process

Yancey claims that his due process rights are being violated by his conviction and sentence in this case as it departs from the sentence he received in 1988 in case CC-1987-646. The sentence Yancey earned in 2016 is not a continuation of, an addition to, or in relation to his 1988 sentence. The only potential relationship is that due to his conviction in 1988, Yancey is classified as a "sex offender" and thus governed by ASORCNA's regulatory scheme. Yancey had a trial, with counsel, and was found guilty of the two ASORCNA violations in the 2016 case.

ASORCNA application is not related to sentencing, sentences, or charges for sex offenses. ASORCNA is a regulatory scheme that governs those that through being convicted or pleading to a sex offense are classified as "sex offenders." Yancey's conviction of Rape II in 1988 classifies him as a sex offender under the Alabama Code.⁷ Under ASORCNA regulations, anyone convicted of such an offense is classified as an Adult Sex Offender.⁸ ASORCNA applies to Yancey and it doesn't violate due process for him to be held liable for failure to comply with the act. Yancey's conviction under ASORCNA did not further or violate the sentence he received in his Rape II case.

³ *id.* 1248

⁴ *Kennedy v Mendoza-Martinez* 83 S.Ct. 554 (1963)

⁵ *McGuire v Strange* at 1248-1250

⁶ *id.* 1250

⁷ Ala.Code 1975 § 15-20A-5

⁸ Ala.Code 1975 § 15-20A-4

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There was no violation of Yancey's due process rights. Therefore, this claim is without merit.

2. Violation of Protections from Ex Post Facto Laws and Double Jeopardy Protections

As the State notes, the United States Supreme Court ruled on issues relating to Alaska's SORNA regulations and ex post facto and double jeopardy claims in *Smith v Doe*⁹. When the Federal District Court took up this issue in *McGuire v Strange* 83 F.Supp.3d 1231 (M.D.Ala 2015), it relied heavily on *Smith v Doe* in its ruling regarding ASORCNA. In its ruling, the Middle District Court held, in part, the following:

"Regulatory scheme of Alabama Sex Offender Registration and Community Notification Act (ASORCNA) as a whole was not so punitive in purpose or effect as to negate Alabama legislature's stated nonpunitive intent, and thus ASORCNA's scheme as a whole not subject to ex post facto challenge..."

As this is a civil regulatory scheme, it is not criminal punishment that would be classified as *ex post facto* punishment or qualify as a double jeopardy violation. Even though the violations Yancey committed resulted in criminal penalty, this does not make ASORCNA a criminal law subject to such challenges. The express legislative intent was one of public safety and child welfare. The Defendant notes the history of "Megan's Laws." While these laws do put restraint and conditions on sex offenders, courts have repeatedly found this to be balanced against the public interest. In the rare instances where courts have ruled portions of ASORCNA laws to be punitive, the finding is based on finding the scheme so punitive that it negates the legislative intent or would show no possible way of furthering the stated legislative intent. In Yancey's case, he failed to notify law enforcement upon moving and established a residence near a school. The ability to effectively track those classified as Adult Sex Offenders and the need to prevent them easy access to areas of vulnerable persons such as children are goals of ASORCNA. Yancey's failure to comply with these regulations and therefore to earn sanctions under these regulations is exactly the stated legislative intent and purpose of these laws.

Further, Yancey makes a claim regarding double jeopardy protections. Fifth amendment double jeopardy protections exist to ensure that the State cannot prosecute a person for the same crime more than once or continue to get a "bite at the apple." This is not the issue present in Yancey's petition. Yancey violated ASORCNA's regulatory scheme. These are separate new infractions of the law that he faced penal sanctions for breaking. This is not a violation of double jeopardy protections.

As ASORCNA is a regulatory scheme ex post facto laws do not apply. Further, the scheme is not so punitive as it applied to Yancey as to negate the legislative intent or purpose of ASORCNA. In fact, the application to Yancey in this instance meets the goals and purpose of

⁹ *Smith v Doe* 123 S.Ct. 1140 (2003)

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ASORCNA. Therefore, Yancey's claims regarding violations of ex post facto protections and double jeopardy protections are without merit.

3. Ineffective Assistance of Counsel

Yancey's claims regarding ineffective assistance of counsel rest entirely on counsel's failure to raise the above-named claims. This analysis has already found each of these claims without merit. There is no standard where a counsel would be in error for failure to make claims without merit.

Conclusion

As the ASORCNA law as applied to Yancey is constitutional and does not violate either the United States Constitution or the Constitution of the State of Alabama his claims are without merit. Any remaining grounds not previously addressed are summarily denied. Because the failure of the Court to entertain the petition will not result in a miscarriage of justice and no purpose would be served by any further proceedings, the petition is dismissed.

DONE this 17th day of April, 2018.

/s/ HON. JACOB A. WALKER III
CIRCUIT JUDGE

THE STATE OF ALABAMA -- JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS

(APPENDIX C)

CR-17-0737

Jonathan Yancey v. State of Alabama (Appeal from Lee Circuit Court: CC15-646.60)

CERTIFICATE OF JUDGMENT

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Court of Criminal Appeals; and

WHEREAS, the judgment indicated below was entered in this cause on August 3rd 2018:

Affirmed by Memorandum.

NOW, THEREFORE, pursuant to Rule 41 of the Alabama Rules of Appellate Procedure, it is hereby certified that the aforesaid judgment is final.

Witness. D. Scott Mitchell, Clerk
Court of Criminal Appeals, on this
the 12th day of October, 2018.

D. Scott Mitchell

Clerk
Court of Criminal Appeals
State of Alabama

cc: Hon. Jacob A. Walker, III, Circuit Judge
Hon. Mary B. Roberson, Circuit Clerk
Jonathan Yancey, Pro Se
John J. Davis, Asst. Attorney General

IN THE SUPREME COURT OF ALABAMA



October 12, 2018

1171084

Ex parte Carlton R. Cockrell. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Carlton R. Cockrell v. State of Alabama) (Jefferson Circuit Court: CC-03-2091.61; Criminal Appeals : CR-17-0374).

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 October 12, 2018:

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

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 12th day of October, 2018.

A handwritten signature in black ink, appearing to read "Julia Jordan Weller".

Clerk, Supreme Court of Alabama

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