

APPENDIX-A

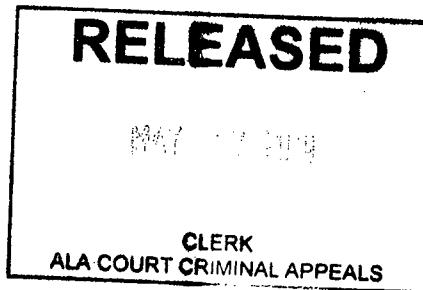
REL: 05/17/2019

Notice: This unpublished memorandum should not be cited as precedent.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
Heflin-Torbert Judicial Building
300 Dexter Avenue
Montgomery, Alabama 36104

MARY B. WINDOM
Presiding Judge
J. ELIZABETH KELLUM
J. CHRIS McCOOL
J. WILLIAM COLE
RICHARD J. MINOR
Judges



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MEMORANDUM

CR-18-0414

Talladega Circuit Court CC-78-284.66

Homer Lawrence Lane v. State of Alabama

MINOR, Judge.

Homer Lawrence Lane appeals the circuit court's summary dismissal of his Rule 32, Ala. R. Crim. P., petition for postconviction relief. Lawrence's petition challenged his 1978 guilty-plea conviction for capital murder, see § 13A-5-40, Ala. Code 1975, and his resulting sentence of life without the possibility of parole.¹

¹After Lane pleaded guilty, a jury was selected and recommended that Lane be sentenced to death. The circuit court did not follow the jury's recommendation, however, and instead

Lane filed the instant petition, at least his seventh Rule 32 petition, on September 28, 2018.² Lane alleged the following claims: (1) he is actually innocent; (2) his extradition was illegal; (3) he was denied counsel; (4) there were structural errors in the proceedings that resulted in his conviction and sentence; (5) Alabama had no "active" criminal code until 2016; and (6) the circuit court had no authority to "revoke his liberty." (C. 12-22.)

The State moved to dismiss Lane's petition, arguing that it was insufficiently pleaded, untimely under Rule 32.2(c), Ala. R. Crim. P., successive under Rule 32.2(b), Ala. R. Crim. P., and precluded under Rule 32.2(a)(2), (a)(3), (a)(4), and (a)(5), Ala. R. Crim. P. (C. 72-77.)

sentenced Lane to life without the possibility of parole.

²Lane is a prolific filer. This Court's records include at least 10 appeals related to Lane's 1978 conviction and sentence. See, e.g., Ex parte Lane (No. CR-11-1746), 155 So. 3d 1131 (Ala. Crim. App. 2012) (table) (mandamus petition related to a Rule 32 proceeding); Ex parte Lane (No. CR-11-1063), 152 So. 3d 462 (Ala. Crim. App. 2012) (table) (mandamus petition related to a Rule 32 proceeding); Lane v. State (No. CR-09-0434), 77 So. 3d 629 (Ala. Crim. App. 2010) (table) (Rule 32 petition); Ex parte Lane (No. CR-08-0693), 46 So. 3d 986 (Ala. Crim. App. 2009) (table) (mandamus petition related to a Rule 32 proceeding); Lane v. State (No. CR-05-1193), 4 So. 3d 585 (Ala. Crim. App. 2007) (table) (Rule 32 petition); Ex parte Lane (No. CR-05-0802), 976 So. 2d 533 (Ala. Crim. App. 2006) (table) (mandamus petition related to a Rule 32 proceeding); Ex parte Lane (No. CR-03-1526), 920 So. 2d 617 (Ala. Crim. App. 2004) (table) (mandamus petition related to a Rule 32 proceeding); Lane v. State (No. CR-98-1364), 768 So. 2d 1034 (Ala. Crim. App. 1999) (table) (Rule 32 petition); Ex parte Lane (No. CR-98-0108), 744 So. 2d 969 (Ala. Crim. App. 1998) (table) (mandamus petition related to a Rule 32 proceeding); Lane v. State, 412 So. 2d 292 (Ala. Crim. App. 1981) (granting a new trial on a writ of error coram nobis), rev'd 412 So. 2d 292 (Ala. 1982). See Nettles v. State, 731 So. 2d 626, 629 (Ala. Crim. App. 1998) ("this Court may take judicial notice of its own records" (citing Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992))).

The circuit court summarily dismissed the petition on January 10, 2019. The court held that the petition was precluded based upon the grounds the State asserted. (C. 95-102.) Lane filed a timely notice of appeal.

Rule 32.7(d), Ala. R. Crim. P., permits a circuit court to summarily dismiss a Rule 32 petition if the claims in the petition are insufficiently pleaded, precluded, or without merit. This Court reviews a circuit court's summary dismissal of a Rule 32 petition for an abuse of discretion. Lee v. State, 44 So. 3d 1145, 1149 (Ala. Crim. App. 2009). Under most circumstances, "we may affirm a ruling if it is correct for any reason." Bush v. State, 92 So. 3d 121, 134 (Ala. Crim. App. 2009).

On appeal, Lane reasserts these claims from his petition: claim (2), illegal extradition; claim (3), denial of counsel; claim (4), structural error; claim (5), Alabama did not have a criminal code until 2016; and claim (6), illegal revocation of "his liberties." (Lane's brief, pp. 4-13.) Lane does not address the circuit court's findings other than stating what the circuit court ruled as to each claim. He makes a bare assertion that "his claims for relief are all jurisdictional." (Lane's brief, p. 15.) Except for claim (3) (denial of counsel), however, the above claims are nonjurisdictional. See, e.g., Tombrello v. State, 484 So. 2d 1190, 1191 (Ala. Crim. App. 1985) (challenge to the legality of extradition is a nonjurisdictional claim that is waived when a defendant pleads guilty); Ex parte Gillentine, 980 So. 2d 966, 971-72 (Ala. 2007) (structural error resulting from an improper jury instruction is not a jurisdictional defect that "nullifies" the proceedings); Ex parte Sanders, 792 So. 2d 1087, 1091 (Ala. 2001) ("constitutional claims that are, or that could have been, raised on appeal are subject to the procedural bars set forth in Rule 32.2"). The circuit court properly dismissed these nonjurisdictional claims as precluded and time-barred.

Although Lane's claim 3 is a jurisdictional claim, this Court in 2007 addressed the same claim that Lane was denied counsel. Lane had an evidentiary hearing on that claim, and it was denied. This Court in 2007 affirmed the denial of that claim on the merits. Lane v. State (No. CR-05-1193, Mar. 16, 2007), memo at 2-4. Thus, the circuit court correctly dismissed this claim as successive.

As noted above, Lane has filed multiple petitions challenging his 1978 conviction and sentence.

"[A]llowing [Lane] to file multiple petitions for postconviction relief in which his claims are either precluded or without merit wastes scarce judicial resources. Therefore, [we] would encourage the circuit court to consider adopting sanctions like those proposed in Peoples v. State, 531 So. 2d 323 (Ala. Crim. App. 1988), and Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986), to prevent future frivolous litigation on the part of [Lane] and other similarly situated inmates. See Ex parte Thompson, 38 So. 3d 119 (Ala. Crim. App. 2009)."

Bennett v. State, 77 So. 3d 174, 174 (Ala. Crim. App. 2011) (Kellum, J., concurring specially).

The judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.

APPENDIX - B

IN THE SUPREME COURT OF ALABAMA



August 9, 2019

1180739

Ex parte Homer Lawrence Lane. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: State of Alabama v. Homer Lawrence Lane) (Talladega Circuit Court: CC-78-284.66; Criminal Appeals : CR-18-0414).

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 August 9, 2019:

Writ Denied. No Opinion. Bolin, J. - Parker, C.J., and Sellers, Stewart, and Mitchell, 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 9th day of August, 2019.

A handwritten signature in black ink that reads "Julia Jordan Weller".

Clerk, Supreme Court of Alabama