IN THE SUPREME COURT OF ALABAMA

February 14, 2020

1190270

Ex parte Keith Anthony Newton. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Keith Anthony Newton v. State of Alabama) (Jefferson Circuit Court: CC-15-695.60; CC-15-696.60; Criminal Appeals : CR-18-0496).

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 February 14, 2020:

Writ Denied. No Opinion. Mendheim, J. - Parker, C.J., and Shaw, Bryan, and Mitchell, 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 14th day of February, 2020.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

Appendix A-C

REL: November 15, 2019

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

D. Scott Mitchell
Clerk
Gerri Robinson
Assistant Clerk
(334) 229-0751
Fax (334) 229-0521

MEMORANDUM

CR-18-0496 Jefferson Circuit Court CC-15-695.60; CC-15-696.60

Keith Anthony Newton v. State of Alabama

WINDOM, Presiding Judge.

Keith Anthony Newton appeals the dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he attacked his September 2016 convictions for the electronic solicitation of a child, a violation of § 13A-6-122, Ala. Code 1975; and traveling to meet a child for an unlawful sex act, a violation of § 13A-6-124, Ala. Code 1975. The circuit court sentenced Newton to

Appendix A (1)

concurrent terms of 15 years in prison for each conviction. On September 1, 2017, this Court affirmed Newton's convictions and sentences by unpublished memorandum. Newton v. State (CR-16-0216), 265 So. 3d 329 (Ala. Crim. App. 2017) (table). The certificate of judgment was issued on September 20, 2017.

On October 3, 2018,[1] Newton filed this, his first, Rule 32 petition in which he argued that he received ineffective assistance of counsel because trial counsel failed to: 1) object to the State's closing arguments; 2) adequately prepare for trial;[2] and 3) investigate the case against him. Newton also attached several documents to his Rule 32 petition to support his claims. On November 5, 2018, Newton filed a pro se motion for discovery. On November 19, 2018, the State filed an answer and a motion to dismiss Newton's petition, arguing that his petition was procedurally barred pursuant to Rule 32.2(a)(5), Ala. R. Crim. P., insufficiently pleaded pursuant to Rules 32.3 and 32.6(b), Ala. R. Crim. P., and

---

[1]Although Newton's petition states that it was mailed on September 19, 2018, it does not appear that it was stamped as filed by the circuit clerk until October 3, 2018. Because Newton's petition was filed through counsel, Newton is not entitled to the benefit of the mailbox rule, and his petition is deemed filed on the date the circuit clerk stamped it as filed. See Ex parte Allen, 825 So. 2d 271, 272 (Ala. 2002) (holding that "a pro se incarcerated petitioner/appellant is considered to have 'filed' a Rule 32 petition, a notice of appeal, or a petition for a writ of certiorari when those documents are given to prison officials for mailing" (emphasis added)).

[2]Specifically, Newton contends that trial counsel's lack of preparedness is evidenced by: a) his inability to avoid hearsay objections in his direct examination of Misty Wise; b) his cross-examination of Detective Pannell about Newton's initial police interview; c) the negative character evidence presented during the State's cross-examination of Newton; d) his failure to present evidence that Newton knew the individual he was communicating with was not a 15-year-old child; e) providing "obtainable evidence showing that Newton knew he was not going to a house" to meet "Addison" (C. 48); and f) object to the admission of the email exchange between Newton and "Addison."

without merit. The State attached an affidavit from Newton's trial counsel to its answer and motion to dismiss. On December 18, 2018, Newton filed a pro se motion "for Correction and Amendment of and Reconsideration of Recently Denied Motion for Discovery" in which he argued: (4) that the State withheld evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). On January 17, 2019, the circuit court issued an order summarily dismissing Newton's petition. The circuit court also denied Newton's December 18, 2018 motion for discovery on January 17, 2019.

On appeal, Newton reasserts issues (1), (2)(a), (2)(b), (2)(d), and (3) raised in his Rule 32 petition, and argues that the circuit court erred by dismissing his claims without affording him an evidentiary hearing. Newton also contends that the circuit court erred by denying his motion for discovery. The remaining claims, which have not been reasserted on appeal, are deemed abandoned. See Brownlee v. State, 666 So. 2d 91, 93 (Ala. Crim. App. 1995). Newton also argues for the first time in his reply brief that the circuit court's order dismissing his petition was insufficient. This issue, however, is not properly before this Court for review. See Ex parte Powell, 796 So. 2d 434, 436 (Ala. 2001) ("As a general rule, issues raised for the first time in a reply brief are not properly subject to appellate review.").

In an unpublished memorandum opinion on direct appeal, this Court set out the following facts surrounding Newton's conviction:

> "The evidence at trial revealed that Kyle Pannell, a detective with the Gardendale Police Department, set up a sting operation on October 9, 2013, by placing an advertisement on the Internet Website 'Craigslist.' The advertisement read: '"Hey, y'all. Girl stuck at the house and bored. If y'all are bored, hit me up. It's up to you."' (R. 156.) Detective Pannell testified that, on the day the advertisement was listed, a Craigslist user, later identified to be Newton, responded to the advertisement saying, '"I would love to help pass the time, sweetie."' (R. 157.) Detective Pannell, pretending to be a 15-year-old female named 'Addison Brewer,' then engaged in a lengthy conversation with

Newton. Detective Pannell replied to Newton as follows:

> "'wow keith nice!! LOL I addy. im 15 year old from gardendale. I am 5'3 and weigh 105 blond hair blue eyes. Long story short I suppose to be homeschooled by my mom but she has to have other job for money so she in huntville all week.'

"(C. 188.)[3] Newton responded by asking, 'What do you have in mind to make the day or rest of the week a little more fun?' (C. 188.) Detective Pannell, pretending to be 'Addison,' replied: 'haha well not sure. I don't have a lot of experience in fun.' (C. 188.) The conversation continued with Newton asking 'Addison' if she had ever kissed an older man and inquired as to what kinds of experiences she would like to have. Newton then stated:

> "'I can see that you might be nervous about being on [Craigslist]... you should be. You're really to young to be on here. I'm not sure what you had in mind of passing time while you're home and bored. Maybe some picture trading fun. I'm sure your hormones are driving you crazy and you just wanna bust out and do all kinds of secret things.'

"(C. 190.) For the next few days, Newton continued to inquire about 'Addison's' experiences and desires, asked her for photographs of herself, and

---

[3]Transcripts of the conversations were admitted into evidence. (C. 188-304.) The conversation on October 9, 2013, was conducted through the Craigslist Website, identifying each person by a unique alphanumeric "Craigslist ID." (R. 157.) However, on October 10, 2013, the conversations were conducted via email between "addybrewer15@hotmail.com" and "knewton2795@gmail.com." (C. 191-92.) Newton did not dispute that he was the person communicating with Detective Pannell in the transcripts offered into evidence.

told her about his preferences. For example, Newton stated that he liked things 'a little steamy,' and that he liked 'exploring the body,' and 'making out and rubbing and touching.' (C. 195-96.) However, on October 15, 2013, the conversations ended.

"On July 6, 2014, Newton reestablished communication with 'Addison' by sending an email to the account that was still being monitored by Detective Pannell. Newton stated: 'Hey there Addison. How are you doing? How has your summer been?' (C. 199.) The conversation resumed and on July 12, 2014, Newton asked, 'How old are you again? ... I'm probably twice your age.' (C. 205-06.) 'Addison' responded: 'Haha. That's kewl. I'm 15 years old.' (C. 206.) Newton then asked 'Addison' when her birthday was, to which she replied, "August 31." (C. 206.)

"The conversation continued with Newton asking 'Addison' more about her sexual desires. On July 12, 2014, Newton stated: 'Maybe we can do something and meet and whatnot.' (C. 218.) 'Addison' told Newton that she was sexually inexperienced and that Newton would have to tell her what he wanted to do. Newton responded: 'So like you're wanting to experience things like bj's and licking and fingers and stroking? Rubbing your pussy and making you wet? Do you shave it, keep it trimmed? Or all natural?' (C. 220.) When 'Addison' replied that she had never done any of the things Newton mentioned, Newton stated: 'That's ok if you haven't ever done any of that... But would you like to? Would you like to feel my tongue touch your clit and lick your pussy?' (C. 220.) 'Addison' responded, 'Sure if that's what u wanna do!' (C. 220.) Newton stated that he wanted to do those things as well as other sexual activities. 'Addison' eventually asked Newton when he wanted to do all of these things to which Newton replied, 'Well... You said your mom is gonna be home between tonight and tomorrow ... So next week?' (C. 222.) Newton continued to have a sexually-charged conversation with 'Addison' for the next few days, eventually asking if she felt like

she was ready to have sexual intercourse with him. When 'Addison' answered in the affirmative, Newton stated that he wanted to meet her the next day. 'Addison' then told Newton to email her the next morning and she would give him her address. Newton complied and sent 'Addison' an email on July 15, 2014. Detective Pannell, still posing as 'Addison,' gave Newton an address that led to a dead-end road near a cemetery.

"Detective Pannell testified that he and two other officers traveled to the address he provided to Newton approximately 30 minutes before the meeting was to occur. Detective Pannell stated that he saw a vehicle drive past his vehicle near the time that Newton had agreed to meet 'Addison.' At that point, Detective Pannell initiated a traffic stop on the vehicle and discovered that the driver was Newton who was immediately placed under arrest."

Newton v. State (CR-16-0216), 265 So. 3d 329 (Ala. Crim. App. 2017) (table).

Initially, this Court notes that "[a]n evidentiary hearing on a [Rule 32] petition is required only if the petition is meritorious on its face." Duncan v. State, 925 So. 2d 245, 256 (Ala. Crim. App. 2005) (internal citations omitted). A Rule 32 petition is "meritorious on its face" only if it "contain[s] matters and allegations ... which, if true, entitle the petitioner to relief," Ex parte Boatwright, 471 So. 2d 1257, 1258 (Ala. 1985), and if it "contains a ... full disclosure of the [factual basis for the claim as required under Rule 32.6(b), Ala. R. Crim. P]." Moore v. State, 502 So. 2d 819, 820 (Ala. 1986); Ex parte Clisby, 501 So. 2d 483, 486 (Ala. 1986). See also Boyd v. State, 913 So. 2d 1113, 1125 (Ala. Crim. App. 2003); Duncan v. State, 925 So. 2d 245, 256 (Ala. Crim. App. 2005). Regarding the full-fact pleading requirement contained in Rule 32.6(b), this Court has explained:

"Rule 32.6(b)[, Ala. R. Crim. P.,] requires that the petition itself disclose the facts relied upon in seeking relief. In other words, it is not the pleading of a conclusion which, if true, entitles

> the petitioner to relief. It is the allegation of facts in pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala. R. Crim. P., to present evidence proving those alleged facts."

Boyd, 913 So. 2d at 1125 (internal citations and quotations omitted). In Hyde v. State, this Court explained:

> "The burden of pleading under Rule 32.3 [, Ala. R. Crim. P.,] and Rule 32.6(b)[, Ala. R. Crim. P.,] is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b)."

950 So. 2d 344, 356 (Ala. Crim. App. 2006).

Further, Rule 32.7(d), Ala. R. Crim. P., permits a circuit court to summarily dismiss a Rule 32 petition for, among other reasons, the preclusion grounds outlined in Rule 32.2, Ala. R. Crim. P.; the petitioner's failure to plead his petition with the factual specificity required under Rule 32.6(b), Ala. R. Crim. P.; the petitioner's failure to raise a material issue of fact or law; or the petitioner's failure to state a claim upon which relief may be granted. In other words, Rule 32.7(d) authorizes circuit courts to summarily dismiss a Rule 32 petition that is not "meritorious on its face." Cf. Duncan, 925 So. 2d at 256.

When pleading claims of ineffective assistance of counsel, a Rule 32 petitioner must satisfy the two-prong test established in Strickland v. Washington, 466 U.S. 668 (1984). First, he must identify the specific acts or omissions that he alleges were not the result of reasonable professional judgment on counsel's part and show that these acts or omissions fall "outside the wide range of professionally

competent assistance." Id. at 690. If he meets this burden, he must then show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. "The likelihood of a different result must be substantial, not just conceivable." Harrington v. Richter, 131 S. Ct. 770, 792 (2011) (citing Strickland, 466 U.S. at 693). "A bare allegation that prejudice occurred without specific facts indicating how the petitioner was prejudiced is not sufficient." Hyde, 950 So. 2d at 356. Additionally, where the events that serve as the basis of the allegations of ineffective counsel were observed by the same judge who rules on the Rule 32 petition, the circuit court need not hold a hearing on the allegations of ineffectiveness. See Ex parte Hill, 591 So. 2d 462, 463 (Ala. 1991).[4]

I.

Newton first argues that he received ineffective assistance of counsel because trial counsel failed to object to the State's rebuttal closing argument. Specifically, Newton contends that the prosecutor engaged in prosecutorial misconduct and improperly prejudiced him in front of the jury by making the following argument regarding conflicting evidence presented by the State and the defense concerning whether Newton believed "Addison" was a 15-year-old child:

> "All that matters is that Mr. Newton believed it was a minor. That's all the matters. And that when he was traveling, when he was going there, he believed that there was that probability he was going to have a minor, there was going to be a minor there, a 15-year old girl that he was going to have sex with.
>
> "The fact that there was a possibility it could have been a police officer doesn't matter. The fact there was a possibility that it could have been an

[4]In this case, the circuit court judge who presided over Newton's trial also ruled on his Rule 32 petition.

> adult doesn't matter. The fact that he was wishing it was a 15-year-old girl is what matters. The fact that he was hoping it was a 15-year-old girl is what matters. Just like a drug dealer, I hope this isn't a cop. That's all that matters."

(Tr. R. 337-38.) As a result, Newton claims that these statements "effectively changed [the State's] burden of proof" from "knowingly" to "hoping." (C. 43.)

At the time that Newton committed the offense, § 13A-6-122, Ala. Code 1975, provided:

> "In addition to the provisions of Section 13A-6-69, a person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, a child who is at least three years younger than the defendant, <u>or another person believed by the defendant to be a child at least three years younger than the defendant</u> to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child. Any person who violates this section commits a Class B felony."

(emphasis added).

With regard to prosecutorial misconduct during closing arguments, this Court has held:

> "'"In judging a prosecutor's closing argument, the

Therefore, the circuit court did not err in dismissing Newton's ineffective-assistance-of-counsel claim for failing to object to the prosecutor's statements during closing arguments.

II.

Newton next argues that he received ineffective assistance of counsel because trial counsel did not adequately prepare for trial. Specifically, Newton contends that trial counsel's lack of preparedness is evidenced by: a) his inability to avoid hearsay objections during his direct examination of Misty Wise; b) his failure to cross-examine Detective Pannell about Newton's initial police interview; and c) his failure to present evidence that Newton knew the individual he was communicating with was not a 15-year-old child.

A.

Newton first contends that he received ineffective assistance of counsel because trial counsel was unprepared to question Misty Wise. In particular, Newton claims that trial counsel's lack of preparedness was evidenced by his inability "to overcome the State's hearsay objections and phrase his questions in a way that was not inadmissible hearsay." (C. 45.) As a result, Newton argues that "he was not able to present the type of testimony needed to show that he was not acting out of any attempt to have sex with a 15-year-old child, but he was instead trying to prove that the police were attempting to entice people into answering ads on a part of Craigslist that was supposed to be only for 18-year-olds and older." Id.

Here, Newton failed to plead sufficient facts in support of this claim to satisfy the requirements of Rule 32.3 and 32.6(b), Ala. R. Crim. P. Newton failed to alleged what additional trial preparation trial counsel should have undertaken. Newton also failed to allege how such preparation would have changed Wise's testimony or how that changed testimony would have produced a different result at trial. Strickland, 44 U.S. at 689-90; Van Pelt v. State, 202 So. 3d 707, 759 (Ala. Crim. App. 2015). Accordingly, Newton's claim with respect to this issue is insufficiently pleaded and does not entitle him to any relief. Hyde, 950 So. 2d at 356;

Strickland, 466 U.S. at 697.

B.

Newton next claims that he received ineffective assistance of counsel because trial counsel failed to adequately prepare for trial, as evidenced by his failure to cross-examine Detective Pannell about Newton's initial police interview. Specifically, Newton contends that trial counsel's lack of preparedness is evidenced by trial counsel's failure to cross-examine Detective Pannell about statements Newton made in his initial police interview indicating that Newton believed "Addison" was a police officer, not a child.

Again, Newton's claim is not sufficiently pleaded to satisfy the requirements of Rules 32.3 and 32.6(b), Ala. R. Crim. P. Newton failed to specifically allege what additional trial preparation trial counsel could have undertaken, failed to allege how such preparation would have changed Detective Pannell's testimony, or how such testimony would have changed the result at trial. Further, the evidence Newton asserts trial counsel should have elicited was hearsay and would have been inadmissible. See Henderson v. State, 650 So. 2d 532, 533 (Ala. Crim. App. 1994) ("'"Although frequently said to constitute self-serving declarations, ... statements made by the accused, after the commission of the crime and not as part of the res gestae, fit the classic definition of hearsay."'" (quoting Williams v. State, 536 So. 2d 169, 170 (Ala. Crim. App. 1988), quoting in turn Harrell v. State, 470 So. 2d 1303, 1306 (Ala. Crim. App. 1984))). Therefore, Newton has not pleaded facts sufficient to satisfy the requirements of Rules 32.2 and 32.6(b), Ala. R. Crim. P. Boyd v. State, 913 So. 2d 1113, 1133 (Ala. Crim. App. 2003) (holding that a bare assertion of the appellant's subjective opinion that counsel should have performed differently is insufficient to satisfy the pleading requirements of Rule 32.6(b), Ala. R. Crim. P.) Consequently, this issues does not entitle Newton to any relief.

C.

Newton next claims that he received ineffective assistance of counsel because trial counsel failed to present evidence that Newton knew the individual with whom he was

communicating was not a 15-year-old child. Specifically, Newton contends that trial counsel's lack of preparedness is evidenced by his failure to present the following evidence:

> "Keith Newton had searched for Addison Brewer and the email address that the officer used to claim to be her (addybrewer15@hotmail.com) to find 'her' profile page on Facebook. (Defendant's exhibit 3). The Facebook profile associated with that email (Defendant's exhibit 5), shows a photo that was uploaded on June 7, 2013. Clearly, the officer used the number 15 in the email address as an additional sign of the girl's age, and Mr. Newton knew that was false as he searched for and found multiple profiles set up under that email address that would have made it impossible for her to be 15-years-old. This explains Mr. Newton's regularly questioning 'Addison' about her actual age. Additionally, given the date that the photo was created, Newton knew that he would not have been meeting with a 15-year-old anyways since he was meeting with the officers on July 14, 2014, more than a year after the June 7, 2013 upload date."

(C. 47.)

Again, Newton's petition does not contain "a clear and specific statement on the grounds upon which relief is sought, including a full disclosure of the factual basis of those grounds." Rule 32.6(b), Ala. R. Crim. P. Newton failed to specifically allege what additional trial preparation trial counsel could have undertaken. Additionally, Newton fails to identify the witnesses trial counsel could have called or the documents trial counsel could have offered to support these facts. Newton also failed to allege how this information would have changed the result at trial. Therefore, Newton did not satisfy the pleading requirements of Rule 32.6, Ala. R. Crim. P., and the circuit court did not err by summarily dismissing this claim. See Rule 32.7(d), Ala. R. Crim. P.

III.

Finally, Newton claims that he received ineffective assistance of counsel because trial counsel failed to investigate the case properly and discover that the State had withheld exculpatory evidence in violation of Brady v.

Maryland, 373 U.S. 83 (1963). Specifically, Newton contends that trial counsel failed to ensure that the State provided exculpatory evidence regarding a conversation Newton had with the officer who transported him following his arrest.

In his petition, Newton states:

> "During the ride from where Mr. Newton was arrested and when he was interviewed, he voluntarily discussed with the police officer that escorted him, who did not testify in trial, his purpose for going to the place where he was arrested and how he knew it was a setup. Mr. Newton explained that he was only there to prove a point, that the person he was emailing was the police and not a child and that he did not actually intend to meet with a child. He also explained how he knew that there was not a house there by looking at Google Maps and that he knew that the police would be there based upon the nature of the conversation, which is shown by one of the last statements by Newton in the email conversation where he said 'I can't believe I'm about to put myself in jail.' Any information about this was not obtained by [trial counsel] to be used at trial. Additionally, this was exculpatory evidence that should have been turned over by the State under Brady v. Maryland, 373 U.S. 83 (1963), since it showed that Mr. Newton had admitted he had no criminal motive when he was arrested and that it was not an attempt for him to have sex with a child. Rather, he wanted to prove a point like he had with the other individuals who he had testify at trial. This affected the likelihood of Mr. Newton's confession by making the jury less likely to believe Mr. Newton's allegations during the trial that he knew the police were behind the account and that he was only doing it to prove a point. Newton's trial attorney should have obtained this information and presented it in trial and that failure contributed to his current illegal incarceration."

(C. 50-51.)

Here, Newton essentially argues that trial counsel was

ineffective for failing to discover a Brady violation. However, this claim is without merit. "To [establish] a Brady violation, a defendant must show that '"(1) the prosecution suppressed evidence; (2) the evidence was favorable to the defendant; and (3) the evidence was material to the issues at trial."'" Freeman v. State, 722 So. 2d 806, 810 (Ala. Crim. App. 1998) (quoting Johnson v. State, 612 So. 2d 1288, 1293 (Ala. Crim. App. 1992)).

> "'Because the government's duty to disclose covers only evidence within the government's possession, the government is not obliged to furnish information already known by the defendant, or information, evidence, or material that is available or accessible to the accused, which the defendant could obtain by exercising reasonable diligence. Discovery is also not required where the defendant knows of the essential facts permitting one to take advantage of the evidence.'
>
> "22A C.J.S. Criminal Law § 667. 'Prosecutors have no duty under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), to disclose evidence available to the defense from another source.' Hurst v. State, 469 So. 2d 720, 723 (Ala. Crim. App. 1985). See also Brown v. State, 982 So. 2d 565 (Ala. Crim. App. 2006); McGowan v. State, 990 So. 2d 931 (Ala. Crim. App. 2003); Gardner v. State, 530 So. 2d 250 (Ala. Crim. App. 1987)."

Vanpelt v. State, 74 So.3d 32, 69-70 (Ala. Crim. App. 2009).

In this case, the information that Newton alleges was suppressed was information within Newton's own knowledge -- a statement he had made to the police. Thus, the State did not suppress the evidence in violation of Brady. As a result, trial counsel was not ineffective for failing to ensure that the State produced this information. See Jackson v. State, 133 So. 3d 420, 459-60 (Ala. Crim. App. 2009) ("'Because the substantive claim underlying the claim of ineffective assistance of counsel has no merit, counsel could not be ineffective for failing to raise this issue.'" (quoting Lee v.

State, 44 So. 3d 1145, 1173 (Ala. Crim. App. 2009))). Accordingly, this issue does not entitle Newton to any relief.

IV.

Finally, Newton argues that the circuit court erred in denying his motion for discovery. Specifically, Newton contends that the State withheld exculpatory evidence in violation of Brady v. Maryland, and that he is entitled to information such as the maintenance records of the police vehicle that transported him, an agreement between Craigslist and the Gardendale Police Department authorizing Detective Pannell to use the site, video footage of Newton in the vehicle that transported him, and agreements with landowners for use of their property during the investigation.

> "The standard for determining whether a Rule 32 petitioner is entitled to discovery is good cause. See Ex parte Land, 775 So. 2d 847, 852 (Ala. 2000) ('"[G]ood cause" is the appropriate standard by which to judge postconviction discovery motions.'), overruled on other grounds by State v. Martin, 69 So. 3d 94 (Ala. 2011). '[P]ostconviction discovery does not provide a petitioner with a right to "fish" through official files and ... it "is not a device for investigating possible claims, but a means of vindicating actual claims."' Id. Thus, '[t]he threshold issue in a good-cause inquiry is whether the Rule 32 petitioner has presented claims that are facially meritorious.' Ex parte Turner, 2 So. 3d 806, 812 (Ala. 2008), overruled on other grounds by State v. Martin, 69 So. 3d 94 (Ala. 2011). A claim is facially meritorious 'only if the claim (1) is sufficiently pleaded in accordance with Rule 32.3 and Rule 32.6(b); (2) is not precluded by one of the provisions in Rule 32.2; and (3) contains factual allegations that, if true, would entitle the petitioner to relief.' Kuenzel v. State, 204 So. 3d 910, 914 (Ala. Crim. App. 2015). A Rule 32 petitioner is not entitled to discovery on claims that are not facially meritorious, i.e., on claims that are subject to summary dismissal. See, e.g., Morris v. State, 261 So. 3d 1181, 1202 (Ala. Crim. App. 2016) ('Morris was not entitled to discovery,

> because the claims for which he sought discovery were either insufficiently pleaded, procedurally barred, or meritless, and they were dismissed.'); Van Pelt v. State, 202 So. 3d 707, 720 (Ala. Crim. App. 2015) ('Because we conclude ... that Van Pelt's claims were insufficiently pleaded and that summary dismissal was appropriate, Van Pelt did not show "good cause" to be entitled to discovery on those claims.'); and Yeomans v. State, 195 So. 3d 1018, 1051 (Ala. Crim. App. 2013) ('Our opinion today affirms the summary dismissal of all claims on which Yeomans sought discovery; therefore, Yeomans did not show "good cause" to be entitled to discovery on those claims.')."

Woodward v. State, 276 So. 3d 713, 734-35 (Ala. Crim. App. 2018). In this case, none of Newton's claims were facially meritorious. Thus, Newton was not entitled to discovery relating to those claims. Therefore, the circuit court properly denied Newton's motions for discovery.

Because the claims raised by Newton were either insufficiently pleaded or without merit, the circuit court did not err in denying his petition. See Rule 32.7(d), Ala. R. Crim. P.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Kellum, McCool, Cole, and Minor, JJ., concur.