

ALABAMA COURT OF CRIMINAL APPEALS

CR-19-0988

Moses Jackson v. State of Alabama (Appeal from Calhoun Circuit Court: CC01-1358.61; CC01-1359.61; CC01-1360.61; CC01-1661.61)

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 December 11th 2020:

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 March, 2021.

D. Scott Mitchell
Clerk
Court of Criminal Appeals
State of Alabama

cc Hon. Louie Harold Turner, Jr, Circuit Judge
Hon. Kim McCarson, Circuit Clerk
Moses Jackson, Pro Se
Laura I. Cuthbert, Asst. Attorney General

APPENDIX(B)

IN THE SUPREME COURT OF ALABAMA



March 12, 2021

1200263

Ex parte Moses Jackson. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Moses Jackson v. State of Alabama) (Calhoun Circuit Court: CC-01-1358.61; CC-01-1359.61; CC-01-1360.61; CC-01-1661.61; Criminal Appeals : CR-19-0988).

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 12, 2021:

Writ Denied. No Opinion. Bolin, J. - Parker, C.J., and Wise, Sellers, and Stewart, 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 12th day of March, 2021.

Julia Jordan Weller
Clerk, Supreme Court of Alabama

RELEASED

EXHIBIT E

REL: 12/11/2020

DEC 11 2020

CLERK
ALA COURT CRIMINAL APPEALS

Notice: This unpublished memorandum should not be cited as precedent.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."

ALABAMA COURT OF CRIMINAL APPEALS

CR-19-0988

Moses Jackson v. State of Alabama

Appeal from Calhoun Circuit Court CC-01-1358.61; CC-01-1359.61;
CC-1360.61; and CC-01-1661.61

MEMORANDUM DECISION

MINOR, Judge.

Moses Jackson appeals the Calhoun Circuit Court's judgment summarily dismissing his Rule 32, Ala. R. Crim. P., petition for postconviction relief, in which he challenged his 2003 guilty-plea convictions for three counts of first-degree robbery and one count of attempted murder and his resulting sentences, as a habitual offender, of life imprisonment for each conviction. Jackson did not appeal his convictions and sentences.

Jackson filed the instant petition, his second,¹ on August 28, 2018.² (C. 10, 19.) As best we can discern, Jackson alleged in his petition (1) that the trial court lacked jurisdiction to accept his guilty plea because he had accomplices and the State illegally prosecuted him under the wrong sections of the Code of Alabama 1975; (2) that his convictions for attempted murder and robbery violated double-jeopardy principles. Jackson filed an amendment to his petition, in which he mostly repeated his earlier allegations and added a claim that his plea was void because the court reporter, under the records-retention policy of the Alabama Unified Judicial System ("UJS"), destroyed the records of his guilty-plea proceedings ten years after his plea. (C. 48.)

The State responded and moved to dismiss the petition. (C. 60.) The State asserted that the claims in the petition lacked merit and were untimely, successive, insufficiently pleaded, and precluded. See Rules 32.7(d), 32.2(c), 32.2(b), 32.3, 32.6(b), and 32.2(a)(2) and (a)(4), Ala. R. Crim. P.

Jackson responded to the State, arguing that the State's response was untimely and a crime of "conspiracy" and "fraud." And Jackson noted the State filed it on a holiday, which, Jackson said, the State lacked authority to do. (C. 63.)

The circuit court summarily dismissed the petition on July 23, 2020, for the reasons the State gave in its response. (C. 92.) Jackson timely

¹Jackson filed his first Rule 32 petition in October 2014. The circuit court denied that petition. After remanding the matter for a hearing on one of Jackson's claims, this Court affirmed the denial of his petition. See Jackson v. State (No. CR-14-1166), 231 So. 3d 1137 (Ala. Crim. App. 2016) (table). The Alabama Supreme Court denied Jackson's petition for a writ of certiorari. Ex parte Jackson (No. 1151101), 233 So. 3d 939 (Ala. 2016) (table). 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))).

²The circuit court granted Jackson's request to proceed in forma pauperis. (C. 58.)

appealed. (C. 93.)

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, Jackson generally reasserts the claims he raised in the circuit court.³ Jackson has no right to relief.

Jackson first reiterates his claim that his plea is void because, he says, the court reporter illegally destroyed the record of his guilty-plea proceeding. This surfaced in Jackson's appeal from the judgment denying his first Rule 32 petition. In response to this Court's order remanding the cause, the circuit court found that the court reporter had destroyed the records after ten years under a UJS records-retention policy.⁴ Jackson

³Jackson does not appear to reassert his double-jeopardy claim. But that claim, even if he reasserted it, is the same or similar to the double-jeopardy claim he raised in his first petition and was thus proper for summary dismissal. See Rule 32.2(b), Ala. R. Crim. P. See also Jackson, mem. op. in CR-14-1166 at 2-3 ("Jackson alleged in his petition ... [t]hat his conviction for attempted murder violates double-jeopardy principles because, he said, the indictment charged him "twice with one act."").

⁴This Court stated in its memorandum:

"The supplemental record contains all documents relating to Jackson's pleas and sentencing but it does not include a transcript of the plea colloquy and sentencing hearing. However, the circuit court stated in its order on second remand that because Jackson did not appeal his convictions and sentences no transcript had been prepared at that time and that the court reporter's stenographic notes of the plea colloquy had been destroyed after 10 years had passed in accordance

contends this is a jurisdictional issue. Jackson's argument lacks merit.

First, Jackson's attacks on this Court's 2016 affirmance of the denial of his first Rule 32 petition—which included this Court's statements about the unavailability of the transcript—are untimely. Second, Jackson cites no authority showing that his claim is jurisdictional, and we are aware of no such authority. Jackson does not dispute he pleaded guilty, and the record in Jackson's appeal from the denial of his first Rule 32 petition includes all documents relating to his pleas. Those documents show that he pleaded guilty. A claim based on those pleas—such as a claim the pleas were involuntary—would be time-barred, and thus the lack of a transcript of those proceedings is, at most, harmless error.⁵ Cf. *Fincher v. State*, 837 So. 2d 876, 878 (Ala. Crim. App. 2002) ("Claims relating to the voluntariness of guilty pleas are not jurisdictional.").

Jackson's second argument on appeal challenges "the charging instrument"—alleging that the State prosecuted him under the wrong

with the Alabama Unified Judicial System's Records Retention Schedule for the Circuit, District, Juvenile, and Municipal courts; therefore, it was not possible to provide a transcript of the plea colloquy and sentencing hearing. Neither party requested permission to file additional briefs on return to second remand."

Jackson, mem. op. in CR-14-1166 at 4.

⁵In his reply brief, Jackson argues that with no transcript of the guilty-plea proceedings, the record cannot show that a colloquy occurred or that the circuit court pronounced sentence. Jackson did not raise this claim below, and thus it is not properly before us. *Woodward v. State*, 276 So. 3d 713, 788 (Ala. Crim. App. 2018) ("It is well settled that '[a]n appellant cannot raise an issue on appeal from the denial of a Rule 32 petition which was not raised in the Rule 32 petition.' *Arrington v. State*, 716 So. 2d 237, 239 (Ala. Crim. App. 1997)."); *Myrick v. State*, 787 So. 2d 713, 718 (Ala. Crim. App. 2000) ("This court will not consider an argument raised for the first time on appeal; its review is limited to evidence and arguments considered by the trial court.").

section of the Code. Jackson earnestly contends that this claim differs from a claim he raised in his first Rule 32 petition. But his earnestness does not make it a different claim,⁶ nor does it make a jurisdictional one. Jackson's claim challenges the indictments as defective, a nonjurisdictional claim.⁷ See, e.g., Ex parte Seymour, 946 So. 2d 536, 539 (Ala. 2006). The circuit court properly dismissed this claim as successive under Rule 32.2(b), Ala. R. Crim. P., among other reasons.

Jackson's final argument is that the circuit court should not have considered the State's response and motion to dismiss his Rule 32 petition because, Jackson says, the State untimely filed it. This argument lacks merit.

Rule 32.7(a), Ala. R. Crim. P., provides, in relevant part:

⁶In his first petition, Jackson alleged:

"[B]ecause he was aided and abetted in the robberies by two codefendants, he should have been indicted for second-degree robbery with the indictments alleging the essential element that he was aided in the robbery by other participants, but that he was charged with first-degree robbery and the indictments failed to allege that he was aided in the robberies by other participants."

Jackson, mem. op. in CR-14-1166 at 6. In his second petition, Jackson alleges that "the DA imparted" a criminal code section that Jackson says did not apply to his behavior. Jackson says because he had accomplices, the State should have prosecuted him for second-degree robbery and third-degree assault. (C. 33.) He argues that his "illegal" convictions and sentences violate the Constitution. (C. 35-38.) At root, this is the same claim he raised in his first petition.

⁷In his brief on appeal, Jackson tries to recast his claim as one alleging that the indictments did not charge any offense under Alabama law. That claim is not properly before us because Jackson did not raise it in the circuit court. Woodward, supra; Myrick, supra. And even if the claim were properly before us, it lacks merit.

"Within thirty (30) days after the service of the petition, or within the time otherwise specified by the court, the district attorney ... shall file with the court and send to the petitioner or counsel for the petitioner, if any, a response, which may be supported by affidavits and a certified record or such portions thereof as are appropriate or material to the issues raised in the petition."

(Emphasis added.) In its order summarily dismissing Jackson's petition, the circuit court stated:

"Upon review of the Rule 32 Petition for Relief from Conviction or Sentence filed by Petitioner, the State of Alabama's Response, Petitioner's Response in Opposition to DA Response and all other pleadings, the Court adopts the State's Response and is of the opinion that the Petition is due to be denied."

(C. 92.) By accepting and considering the State's response, the circuit court implicitly extended the time for the State to respond beyond the 28 days it permitted in its October 12, 2018, order. See Owens v. State, 659 So. 2d 977, 978 (Ala. Crim. App. 1994) ("The rule specifically allows the trial court to specify a time period other than 30 days and, by accepting the State's untimely response, the trial court by implication has done so."). Thus, the circuit court did not err in considering the State's response.

The judgment of the circuit court is affirmed.

AFFIRMED.

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

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