

Ex parte Lewis E. Washington III; (In re: Lewis E. Washington III v. Mynesha J. Leonard)

COURT OF CIVIL APPEALS OF ALABAMA

176 So. 3d 852; 2015 Ala. Civ. App. LEXIS 34

2140163

February 20, 2015, Released

Editorial Information: Subsequent History

Related proceeding at L.E.W. v. M.J.L., 2015 Ala. Civ. App. LEXIS 266 (Ala. Civ. App., Nov. 20, 2015)

Editorial Information: Prior History

APPENDIX (H)

(Elmore Circuit Court, DR-14-900264).

Disposition:

PETITION DISMISSED.

Counsel Lewis E. Washington III, Petitioner, Pro se.

Judges: THOMPSON, Presiding Judge. Pittman, Thomas, Moore, and Donaldson, JJ., concur.

CASE SUMMARY: Juvenile court retained jurisdiction under Ala. Code § 12-15-117(c) to modify its prior orders regarding the support and custody of a child; thus, the juvenile court, not the circuit court, had jurisdiction over a custody petition filed by the child's father, and any orders the circuit court had entered were void and not subject to review.

OVERVIEW: HOLDINGS: [1]-Pursuant to Ala. Code § 12-15-115(a)(6), (7), a juvenile court had jurisdiction to establish, modify, or enforce the custody and support orders it had entered because the support order implicitly determined the paternity of the child and the award support implicitly gave the mother custody of the child; [2]-Under Ala. Code § 12-15-117(c), the juvenile court retained jurisdiction to modify those previously entered orders, and therefore, the juvenile court, not the circuit court, had jurisdiction over a custody petition filed by the child's father; [3]-Because the circuit court never obtained jurisdiction over the matter, the orders it had entered to date in the case were void and not subject to any review by the appellate court.

OUTCOME: Petition dismissed.

LexisNexis Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > General Overview

An appellate court must take notice of **jurisdictional issues** ex mero motu. **Jurisdictional** matters are of such **magnitude** that appellate courts take notice of them at any time and do so even ex mero motu.

Wynlake Residential Association, Inc.; Wynlake Development, LLC; SERMA Holdings, LLC; Builder1.com, LLC; J. Michael White; Shandi Nickell; and Mary P. White v. Timothy O. Hulsey, individually and in a representative capacity as a member of Wynlake Residential Association, Inc.

SUPREME COURT OF ALABAMA

2021 Ala. LEXIS 110

1200242

October 22, 2021, Released

Notice:

THIS OPINION IS SUBJECT TO FORMAL REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE SOUTHERN REPORTER.

Editorial Information: Prior History

APPENDIX (H)

Appeal from Shelby Circuit Court. (CV-17-901186).

Disposition:

APPEAL DISMISSED.

Judges: BRYAN, Justice. Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ., concur.

CASE SUMMARY Under Alas. R. Civ. P. 71B, appeal of arbitration award was dismissed for lack of jurisdiction as notice of appeal was untimely because the 90-day period during which the circuit court could have ruled on the Alas. R. Civ. P. 59 motion expired on December 1, 2020; and defendants did not file notice of appeals by January 12, 2021.

OVERVIEW: HOLDINGS: [1]-In an appeal from an arbitration award, which was governed by Alas. R. Civ. P. 71B, the appeal was dismissed for lack of jurisdiction as the notice of appeal was untimely because the 90-day period during which the circuit court could have ruled on the Alas. R. Civ. P. 59 motion expired on December 1, 2020; there was no indication that the 90-day period was extended under Alaska R. Civ. P. 59.1; and defendants had 42 days from the date the postjudgment motion was denied by operation of law on December 1, 2020, to file a notice of appeal, which was January 12, 2021, but the defendants did not file the notice of appeal to until January 20, 2021.

OUTCOME: Appeal dismissed.

LexisNexis Headnotes

Civil Procedure > Alternative Dispute Resolution > Judicial Review
Civil Procedure > Alternative Dispute Resolution > Arbitrations

Alaska R. Civ. P. 71B establishes a unique procedure for appealing an arbitration award.

Civil Procedure > Alternative Dispute Resolution > Judicial Review
Civil Procedure > Appeals > Reviewability > Time Limitations
Civil Procedure > Alternative Dispute Resolution > Validity of ADR Methods

In summary, Alaska R. Civ. P. 71B establishes the following procedure for the appeal of an arbitration

award: (1) a party must file a notice of appeal with the appropriate circuit court within 30 days after service of the notice of the arbitration award; (2) the clerk of the circuit court shall promptly enter the award as the final judgment of the circuit court; (3) the aggrieved party may file a Alaska R. Civ. P. 59 motion to set aside or vacate the judgment, and such filing is a condition precedent to further review by any appellate court; (4) the circuit court grants or denies the Alaska R. Civ. P. 59 motion; and (5) the aggrieved party may then appeal from the circuit court's judgment to the appropriate appellate court.

Governments > Courts > Clerks of Court
Civil Procedure > Alternative Dispute Resolution > Judicial Review

APPENDIX (1)

In the context of the procedure set out in Alaska R. Civ. P. 71B, when a Alaska R. Civ. P. 59 motion is filed before the clerk's entry of the award as the judgment of the circuit court, the Alaska R. Civ. P. 59 motion quickens upon the entry of the judgment.

Civil Procedure > Pleading & Practice > Motion Practice > Content & Form
Civil Procedure > Judgments > Relief From Judgment > Motions for New Trials

Alaska R. Civ. P. 59.1 applies to a Alaska R. Civ. P. 59 motion filed under the provisions of Alaska R. Civ. P. 71B. Alaska R. Civ. P. 71B(f).

Governments > Courts > Authority to Adjudicate

A trial court has the inherent power to enforce its judgments and to make such orders and issue such process as may be necessary to render the judgments effective.

Civil Procedure > Appeals > Reviewability > Time Limitations
Civil Procedure > Judgments > Relief From Judgment > Motions for New Trials

When a Alaska R. Civ. P. 59 motion is deemed denied under the provisions of Alaska R. Civ. P. 59.1, the time for filing a notice of appeal shall be computed from the date of denial of such motion by operation of law, as provided for in Alaska R. Civ. P. 59.1.

Governments > Courts > Authority to Adjudicate

Jurisdictional matters are of such magnitude that the supreme court takes notice of them at any time and do so even ex mero motu.

Attachment to Appendix A-1

APPENDIX I

Civil Procedure > Judgments > Relief From Judgment > Void Judgments *Civil Procedure > Appeals > Standards of Review > Abuse of Discretion*

Ala. R. Civ. P. **60(b)(4)** provides for relief from a judgment when that judgment is void. Generally, an appellate court reviews a trial court's ruling on a Rule 60(b) motion to determine whether the trial court exceeded its discretion. The standard of review on appeal from the denial of relief under Rule 60(b)(4) is not whether there has been an abuse of discretion. When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process. In other words, if the underlying judgment is void because the trial court lacked subject-matter or personal jurisdiction or because the entry of the judgment violated the defendant's due-process rights, then the trial court has no discretion and must grant relief under Rule 60(b)(4).

Civil Procedure > Judgments > Relief From Judgment > Void Judgments *Civil Procedure > Appeals > Standards of Review > De Novo Review* *Civil Procedure > Appeals > Standards of Review > Fact & Law Issues*

An appellate court reviews de novo the trial court's decision on a Ala. R. Civ. P. **60(b)(4) motion** to set aside a judgment as void, because the question of the validity of a judgment is a question of law. Notwithstanding an appellate court's de novo review, when a trial court, in ruling on a Rule 60(b)(4) motion, makes factual findings implicating the ore tenus rule, the trial court's factual findings are entitled to some deference by the appellate court.

COURT OF CIVIL APPEALS OF ALABAMA
122 So. 3d 185:: Hall v. Hall:: JANUARY 11, 2013

ALABAMA RULES OF APPELLATE PROCEDURE

APPENDIX A-2

RULE 21 (e) Review in supreme court of decisions of courts of appeals.

(1) A decision of a court of appeals on an original petition for writ of mandamus or prohibition or other extraordinary writ (i.e., a decision on a petition filed in the court of appeals) may be reviewed de novo in the supreme court, and an application for rehearing in the court of appeals is not a prerequisite for such review. If an original petition for extraordinary relief has been denied by the court of appeals, review may be had by filing a similar petition in the supreme court (and, in such a case, in the supreme court the petition shall seek a writ directed to the trial judge). If an original petition has been granted by the court of appeals, review may be had by filing in the supreme court a petition for writ of mandamus or prohibition or other extraordinary writ directed to the court of appeals, together with a copy of the proceedings in the court of appeals, including the order granting the writ.



IN THE SUPREME COURT OF ALABAMA

November 23, 2022

APPENDIX **(A-3)**

SC-2022-0931

Ex parte Moses Jackson. PETITION FOR WRIT OF PROHIBITION: CRIMINAL (In re: State of Alabama v. Moses Jackson) (Calhoun Circuit Court: CC-01-1358, CC-01-1359, CC-01-1360, and CC-01-1361; Criminal Appeals: CR-2022-0737).

ORDER

The "Petition for Writ of Prohibition," being treated as a Petition for Writ of Mandamus, filed by Moses Jackson on September 29, 2022, directed to the Honorable Louie Harold "Bud" Turner, Jr., Judge of the Calhoun Circuit Court, having been submitted to this Court,

IT IS ORDERED that the Petition is DENIED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Witness my hand and seal this 23rd day of November, 2022.

Megan B. Rhodelske

Clerk of Court,
Supreme Court of Alabama

FILED

November 23, 2022

Clerk of Court
Supreme Court of Alabama

The word "shall" is clear and unambiguous and is imperative and mandatory. As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means "must" and is inconsistent with a concept of discretion.

Court of Civil Appeals of ALABAMA
ALA. DEPT. of PUB. SAFETY v. BARBOUR
5 SO. 3d 601 (SEPT. 26 2008)

SIBLEY v. McMAHON et al.
SUPREME COURT OF ALABAMA
210 Ala. 598; 98 So. 805; 1924 Ala. LEXIS 23
1 Div. 292.
January 24, 1924, Decided

Editorial Information: Prior History

Appeal from Circuit Court, Mobile County; Claude A. Grayson, Judge.
Bill in equity by Harriet B. Sibley against Grace St. John McMahon and others, for injunction to restrain the obstruction of an alleyway. From a decree denying relief, complainant appeals. Reversed and rendered.

Disposition:

Reversed and rendered.

Headnotes

1. Appeal and error--No presumption in favor of findings of trial court on documentary evidence.

In a suit for injunction, where evidence was documentary and by deposition of witnesses, and no witness was examined orally, the reviewing court must give no weight to the decision of the trial court upon the facts, and must indulge no presumption in its favor; the review being de novo as to the facts, under Code 1907, § 5955, subd. 1.

Roy Lavor Clark v. State of Alabama
COURT OF CRIMINAL APPEALS OF ALABAMA
29 So. 3d 252; 2009 Ala. Crim. App. LEXIS 89
CR-07-1705
August 7, 2009, Released

Editorial Information: Subsequent History

Released for Publication January 29, 2010.

Editorial Information: Prior History

Appeal from Mobile Circuit Court. (CC-05-4589) Joseph S. Johnston, Trial Judge. Clark v. Boyd, 2009 U.S. Dist. LEXIS 86234 (S.D. Ala., July 28, 2009)

Disposition:

REVERSED AND REMANDED.

Counsel

For Appellant: Glenn L. Davidson, Mobile.

For Appellee: Troy King, Atty. Gen., Kristi O. Wilkerson, Asst.

Atty. Gen.

Judges: WINDOM, Judge. Wise, P.J., and Welch, Kellum, and Main, JJ., concur.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant appealed his conviction for first-degree theft of property by the Mobile Circuit Court (Alabama) based on a stipulation that the State could prove a prima facie case of first-degree theft of property. He argued that, although he did not enter a formal **guilty** plea, his stipulation to the State's ability to prove a prima facie case was in essence a **guilty** plea and a failure to comply with Ala. R. Crim. P. 14.4 invalidated his stipulation. Because the court could not presume a valid waiver of defendant's constitutional rights where the record was silent and because the record **failed** to establish that defendant knowingly and voluntarily stipulated to his guilt under Ala. R. Crim. P. 14.4, the trial court erred in accepting his stipulation and **adjudicating** him **guilty**.

OVERVIEW: In exchange for defendant's stipulation to stealing athletic jerseys valued at \$ 22,000, the State agreed that he would be placed on "good behavior" status for 18 months if he paid \$ 22,000 in restitution within the 18 month "good behavior" period and the State would dismiss the charge against him. If he paid less than \$ 22,000 but more than \$ 11,000, he would be convicted of and sentenced for third-degree theft of property. If he **failed** to pay at least \$ 11,000, he would be convicted of and sentenced for first-degree theft of property. In compliance with the agreement, the trial court abstained from formally **adjudicating** him **guilty**. After he **failed** to pay at least \$ 11,000, the trial court **adjudicated** him **guilty** of first-degree theft of property based upon his earlier stipulation. The appellate court held that because defendant was **adjudicated guilty** based solely on his stipulation, his stipulation was the functional equivalent of a **guilty** plea. Accordingly, the standards applicable to **guilty** pleas applied to his stipulation. The trial court **failed** to employ the safeguards required by Ala. R. Crim. P. 14.4 and Boykin before accepting defendant's stipulation of guilt.

OUTCOME: The judgment of the trial court was reversed. The cause was remanded to the trial court for that court to set aside defendant's conviction.

LexisNexis Headnotes

Criminal Law & Procedure > Guilty Pleas > General Overview

A plea of guilty is more than a voluntary confession made in open court. It also serves as a stipulation that no proof by the prosecution need be advanced. It supplies both evidence and verdict, ending controversy.

Criminal Law & Procedure > Guilty Pleas > Sufficiency of Allocution

Criminal Law & Procedure > Guilty Pleas > Knowing & Intelligent Requirement

Criminal Law & Procedure > Guilty Pleas > Voluntariness

Due process requires that a guilty plea be a voluntary, knowing, and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. Before a trial court can accept a defendant's plea of guilty, the trial court must determine that the defendant is entering the plea voluntarily. In order to ensure that a defendant's plea is entered knowingly and voluntarily, Ala. R. Crim. P. 14 requires a circuit court to conduct a colloquy with the defendant before accepting a guilty plea [to ensure] that a criminal defendant is adequately advised of his rights so that he may make a voluntary and intelligent decision to enter such a plea.

Criminal Law & Procedure > Guilty Pleas > Sufficiency of Allocution

See Ala. R. Crim. P. 14.4(a).

Opinion

Opinion by: WINDOM

Opinion

{29 So. 3d 252} WINDOM, Judge.

Roy Lavorn Clark appeals his conviction for first-degree theft of property, a violation of § 13A-8-3, Ala. Code 1975, and his resulting sentence of five years in prison. Pursuant to a negotiated agreement, Clark stipulated that the State could prove a *prima facie* case of first-degree theft of property against him. Specifically, Clark **{29 So. 3d 253}** stipulated that the State could prove that he stole athletic jerseys valued at \$ 22,000.

In exchange for Clark's stipulation, the State agreed that Clark would be placed on "good behavior" status for 18 months and that the following terms applied: 1) if Clark paid \$ 22,000 in restitution within the 18 month "good behavior" period, the State would dismiss the charge against him; 2) if Clark paid less than \$ 22,000 but more than \$ 11,000, he would be convicted of and sentenced for third-degree theft of property, a violation of § 13A-8-5, Ala. Code 1975; and 3) if Clark failed to pay at least \$ 11,000, he would be convicted of and sentenced for first-degree theft of property, a violation of § 13A-8-3, Ala. Code 1975.

In compliance with the agreement, the circuit court abstained from formally adjudicating Clark guilty, and Clark was given 18 months in which to pay restitution to the victim in the amount of \$ 22,000. After Clark failed to pay at least \$ 11,000 during his 18-month "good behavior" period, the circuit court adjudicated him guilty of first-degree theft of property based upon his earlier stipulation. The circuit court also sentenced Clark to serve five years in prison and ordered him to pay \$ 22,000 in restitution.

On appeal, Clark argues that the circuit court's adjudication of guilt must be reversed because the record does not reflect that his decision to stipulate to a *prima facie* case of first-degree theft of property and his agreement to be adjudicated guilty upon noncompliance with the "good behavior" agreement was made knowingly and voluntarily. Specifically, Clark contends that, although he did not enter a formal guilty plea, his stipulation to the State's ability to prove a *prima facie* case was in essence a guilty plea; therefore, the circuit court's failure to comply with the requirements set forth in *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), and Rule 14.4, Ala. R. Crim. P., invalidates his stipulation and requires that his conviction be reversed. We agree.

Clark's stipulation that the State could prove a *prima facie* case of first-degree theft of property against him and his agreement to be adjudged guilty and sentenced if he failed to comply with the terms of the "good behavior" agreement was the functional equivalent of a guilty plea. "A plea of guilty is more than a voluntary confession made in open court. It also serves as a stipulation that no proof by the prosecution need b[e] advanced . . . It supplies both evidence and verdict, ending controversy." *Boykin*, 395 U.S. at 243 n.4 (quoting *Woodard v. State*, 42 Ala. App. 552, 171 So. 2d 462, 469 (Ala. App. 1965)). See also *Dingler v. State*, 408 So. 2d 530, 531 (Ala. 1981) (same).

In the case at hand, Clark entered into a "good behavior" stipulation that the State could prove a *prima facie* case of guilt. When Clark failed to comply with the terms of the agreement, he was adjudicated guilty based on his stipulation. During a hearing on Clark's motion for a new trial, the prosecutor described a "good behavior" stipulation in Mobile County as follows: "[W]hen stipulating on a good behavior, if you violate the agreement you've entered into . . . , it's as if you've been found guilty and [the court simply] impose[s] sentence." (R. 10.) The circuit court agreed with the prosecutor's description. *Id.* Thus, when Clark failed to comply with the terms of the "good behavior" agreement, his stipulation was "itself a conviction [and] nothing remain[ed] but to give judgment and determine punishment." *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969) (citing *Kercheval v. United States*, 274 U.S. 220, 223, 47 S. Ct. 582, 71 L. Ed. **{29 So. 3d 254}** 1009 (1927)). See also *Ex parte Howard*, 710 So. 2d 460, 465 (Ala. 1997) (same); See also *State v. Allen*, 220 Ariz. 430, 207 P.3d 683, 687 (Ariz. Ct. App. 2008) (holding that a defendant's stipulation to the facts establishing guilt was the functional equivalent of guilty plea). But cf. *Perkins v. State*, 808 So. 2d 1041, 1098 (Ala. Crim. App. 1999), overruled on other grounds, *Perkins v. Alabama*, 536 U.S. 953, 122 S. Ct. 2653, 153 L. Ed. 2d 830 (2002) (holding that a defendant's strategic stipulation to certain facts of the crime was not the functional equivalent of a guilty plea where the defendant's stipulation did not establish guilt). Because Clark was adjudicated guilty based solely on his stipulation, his stipulation was the functional equivalent of a guilty plea.

Accordingly, the standards applicable to guilty pleas apply to Clark's stipulation. "[D]ue process requires that [a guilty] plea be a voluntary, knowing, and intelligent act 'done with sufficient awareness of the relevant circumstances and likely consequences.'" *Smith v. State*, 494 So. 2d 182, 182 (Ala. Crim. App. 1986) (quoting *Brady v. United States*, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)). "In *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), the United States Supreme Court held that before a trial court can accept a defendant's plea of guilty, the trial court must determine that the defendant is entering the plea voluntarily." *Fleming v. State*, 972 So. 2d 835, 836 (Ala. 2007) . In order to ensure that a defendant's plea is entered knowingly and voluntarily.

Rule 14.4, Ala. R. Crim. P., requires a circuit court to ""conduct a colloquy with the defendant before accepting a guilty plea [to ensure] that a criminal defendant is adequately advised of his rights so that he may make a voluntary and intelligent decision to enter such a plea."" *Brooks V. State*, 854 So. 2d 643, 645 (Ala. Crim. App. 2003) (quoting *Jones v. State*, 727 So. 2d 889, 891 (Ala. Crim. App. 1998), quoting in turn *Heard v. State*, 687 So. 2d 212, 213 (Ala. Crim. App. 1996)). Pursuant to Rule 14.4(a), Ala. R. Crim. P., the circuit court must personally address the defendant and inform him of and determine that he understands the following:

- "(i) The nature of the charge and the material elements of the offense to which the plea is offered;
- "(ii) The mandatory minimum penalty, if any, and the maximum possible penalty provided by law, including any enhanced sentencing provisions;
- "(iii) If applicable, the fact that the sentence may run consecutively to or concurrently with another sentence or sentences;
- "(iv) The fact that the defendant has the right to plead not guilty, not guilty by reason of mental disease or defect, or both not guilty and not guilty by reason of mental disease or defect, and to persist in such a plea if it has already been made, or to plead guilty;
- "(v) The fact that the defendant has the right to remain silent and may not be compelled to testify or give evidence against himself or herself, but has the right, if the defendant wishes to do so, to testify on his or her own behalf;
- "(vi) The fact that, by entering a plea of guilty, the defendant waives the right to trial by jury, the right to confront witnesses against him or her, the right to cross-examine witnesses or have them cross-examined in the defendant's presence, the right to testify and present evidence and witnesses on the defendant's own behalf, and the right to have the aid of compulsory process in securing the attendance of witnesses;
- "(vii) The fact that, if the plea of guilty is accepted by the court, there will not be a further trial on the issue of the defendant's guilt; and

{29 So. 3d 255} " (viii) The fact that there is no right to appeal unless the defendant has, before entering the plea of guilty, expressly reserved the right to appeal with respect to a particular issue or issues, in which event appellate review shall be limited to a determination of the issue or issues so reserved."

Here, the circuit court failed to employ the safeguards required by Rule 14.4, Ala. R. Crim. P., and *Boykin* before accepting Clark's stipulation of guilt. (R. 3-4.) Indeed, there is no indication in the record that Clark understood and voluntarily waived any of his constitutionally protected rights when he entered the "good behavior" stipulation. See *Fleming v. State*, 972 So. 2d at 836 (holding that the record must establish that a defendant's guilty plea was knowingly and voluntarily made and that the circuit court complied with Rule 14.4, Ala. R. Crim. P.).

Because this court cannot presume a valid waiver of an appellant's constitutional rights where the record is silent, *Adair v. State*, 53 Ala. App. 251, 298 So. 2d 671, 674 (Ala. Crim. App. 1974), and because the record fails to establish that Clark knowingly and voluntarily stipulated to his guilt, the circuit court erred in accepting Clark's stipulation and adjudicating him guilty. See *Boykin*, 395 U.S. at 243. Accordingly, the circuit court's judgment is reversed, and this cause is remanded to the circuit court for that court to set aside Clark's conviction.

REVERSED AND REMANDED.

Wise, P.J., and Welch, Kellum, and Main, JJ., concur.

APPENDIX (A-7)

A grand jury may not indict merely on their own suspicions; they must have sworn witnesses or self-proving documents before them. State ex rel. Baxley v. Strawbridge, 52 Ala. App. 685, 296 So. 2d 779, 1974 Ala. Crim. App. LEXIS 1130 (Ala. Crim. App. 1974).

Authority of grand jury.

If a grand jury has any legal evidence before it to authorize the finding of an indictment, all inquiry as to the nature, character and sufficiency thereof is cut off, and therefore, a motion to quash the indictment on the grounds of insufficient evidence will be denied; however, if a grand jury does not have before it any witnesses or legal documentary evidence upon which it may issue an indictment, it is without authority to issue an indictment. Walker v. State, 17 Ala. App. 555, 86 So. 257, 1920 Ala. App. LEXIS 186 (Ala. Ct. App. 1920).

Burden of proof.

In a motion to quash an indictment alleging failure by the state to present legal evidence to the grand jury, the burden of proof is on the defendant. Wright v. State, 421 So. 2d 1324, 1982 Ala. Crim. App. LEXIS 3101 (Ala. Crim. App. 1982).

MICHAEL'S ALABAMA CODE
12-16-200. EVIDENCE IN INDICTABLE OFFENSES

APPENDIX A-7

If "evidence" before grand jury upon which indictment was based consisted of notes and memorandum taken of the testimony when the case was first presented to the grand jury, indictment should be quashed as such notes or memorandum cannot be said to be "testimony given by witnesses" nor "legal documentary evidence" required by statute. Hill v. State, 20 Ala. App. 197, 101 So. 298, 1924 Ala. App. LEXIS 234 (Ala. Ct. App. 1924).

MICHIE'S ALABAMA CODE
12-16-200. EVIDENCE IN INDICTABLE OFFENSES

Jurisdiction is a court's power to decide a case or issue a decree. That power is derived from the Alabama Constitution and the Alabama Code.

Constitutional Law > The Judiciary > Jurisdiction > General Overview

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Governments > Courts > Authority to Adjudicate

The Alabama Constitution states that a circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law. Ala. Const. amend. 328, § 6.04(b).

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Criminal Law & Procedure > Postconviction Proceedings > Motions to Set Aside Sentence

Governments > Courts > Authority to Adjudicate

By enacting Ala. Code § 13A-5-9.1, the legislature conferred on trial courts continuing jurisdiction over motions for sentence reconsideration, to be exercised by only the sentencing judge or the presiding judge. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process.

Supreme Court of ALABAMA
EX PARTE JENKINS
992 So. 2d 1248 (March 12th, 2007)

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from this filing is
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Clerk's Office.**