

Notice: This unpublished memorandum should not be cited as precedent.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
Judicial Building, 300 Dexter Avenue
P. O. Box 301555
Montgomery, AL 36130-1555

RELEASED

AUG 11 2017

CLERK
ALA COURT CRIMINAL APPEALS

MARY BECKER WINDOM
Presiding Judge
SAMUEL HENRY WELCH
J. ELIZABETH KELLUM
LILES C. BURKE
J. MICHAEL JOINER
Judges

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Clerk
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MEMORANDUM

CR-16-0902

Jefferson Circuit Court CC-94-3623.64

David L. Lucas v. State of Alabama

KELLUM, Judge.

David L. Lucas appeals the circuit court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he attacked his 1996 convictions for first-degree rape, first-degree sodomy, and first-degree burglary, and his resulting sentences, as a habitual offender, of life imprisonment without the possibility of parole. This Court affirmed Lucas's convictions and sentences on direct appeal in an unpublished memorandum issued on August 22, 1997. Lucas v. State (No. CR-95-1625), 725 So. 2d 1075 (Ala. Crim. App. 1997).

(table). The Alabama Supreme Court denied certiorari review, and this Court issued a certificate of judgment on February 20, 1998.

On October 18, 1999, Lucas filed his first Rule 32 petition. In that petition, Lucas alleged, among other things, that his trial counsel was ineffective for not objecting to the three prior convictions that were used to enhance his sentence on the ground that the State had not presented properly certified copies of those convictions. The circuit court summarily dismissed the petition, and this Court affirmed that dismissal on appeal. Lucas v. State (No. CR-99-1160), 836 So. 2d 998 (Ala. Crim. App. 2001) (table). However, the Alabama Supreme Court granted certiorari review and remanded the cause to this Court with instructions to remand the cause to the circuit court for it to determine whether one of the three prior felony convictions that had been used to enhance Lucas's sentence -- specifically, a 1985 burglary conviction -- had been properly certified.¹ Ex parte Lucas, 865 So. 2d 418 (Ala. 2002). On remand, the circuit judge first noted that he had presided over Lucas's 1985 burglary trial and that, therefore, the prior conviction was valid for use for sentence enhancement. However, the judge found that a certified copy of that prior conviction did not appear in the record relating to Lucas's 1996 convictions. The judge ordered that a certified copy of the 1985 conviction be placed in the court file relating to the 1996 convictions, and then concluded that Lucas's trial counsel had not been ineffective for not objecting to the 1985 conviction being used for sentence enhancement. This Court affirmed the circuit court's judgment on return to remand, and the Alabama Supreme Court denied certiorari review.²

¹The Court held that the record affirmatively established that the other two prior convictions had been properly certified and, therefore, that his counsel was not ineffective for not objecting to those convictions.

²Lucas subsequently filed at least two more Rule 32 petitions; both were summarily dismissed by the circuit court, and this Court affirmed those dismissals on appeal. Lucas v. State (No. CR-05-0021), 954 So. 2d 1150 (Ala. Crim. App. 2005) (table), and (No. CR-10-0736), 107 So. 3d 237 (Ala. Crim. App. 2011) (table).

On October 5, 2016, Lucas filed this, at least his fourth, Rule 32 petition. He filed an amendment to his petition on March 16, 2017. In his petition and amendment, Lucas alleged that the trial court lacked jurisdiction to sentence him and that his sentences were illegal and exceeded the maximum authorized by law because, he said, the State had not presented at his sentencing hearing a properly certified copy of his prior 1985 burglary conviction that was used to enhance his sentences. He further argued that the circuit court's placing a certified copy of that prior conviction in the court file during the remand proceedings relating to his first petition violated double-jeopardy principles and denied him due process of law. On March 28, 2017, the State filed a motion to dismiss Lucas's petition, arguing that Lucas's claims were precluded by Rules 32.2(a)(3), (a)(5), (b), and (c). On April 12, 2017, Lucas filed a reply to the State's motion to dismiss, arguing that his claims were not subject to the preclusions in Rule 32.2. On May 10, 2017, the circuit court issued an order summarily dismissing Lucas's petition "on the basis of each and every ground set forth in the State's Motion to Dismiss." (C. 7.) Lucas did not file a postjudgment motion.

On appeal, Lucas reasserts both of the claims from his petition. Lucas's challenge to his sentences, although couched in jurisdictional terms, is not truly a jurisdictional claim. See, e.g., Ex parte Batey, 958 So. 2d 339, 341 (Ala. 2006) ("[T]he failure to prove a prior conviction is not a jurisdictional matter; therefore, consideration of that issue in a Rule 32 petition is precluded."). Therefore, this claim is, as the circuit court found, precluded by Rules 32.2(a)(3), (a)(5), (b), and (c).

As for Lucas's challenge to the circuit court's actions relating to his first Rule 32 petition, a Rule 32 petition is not the proper avenue to challenge the propriety of proceedings on a previous Rule 32 petition. See Wallace v. State, 959 So. 2d 1161, 1164 (Ala. Crim. App. 2006) ("[T]he proper avenue in which to challenge alleged errors in the adjudication of the prior Rule 32 petitions is either to file a mandamus petition or to appeal from the dismissal of those petitions rather than to file a new petition."). Therefore,

Lucas is entitled to no relief on this claim.³

Rule 32.7(d), Ala. R. Crim. P., authorizes the circuit court to summarily dismiss a petitioner's Rule 32 petition

"[i]f the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings"

See also Hannon v. State, 861 So. 2d 426, 427 (Ala. Crim. App. 2003); Cogman v. State, 852 So. 2d 191, 193 (Ala. Crim. App. 2002); Tatum v. State, 607 So. 2d 383, 384 (Ala. Crim. App. 1992). Because Lucas's claims were either precluded or not properly raised in a Rule 32 petition, summary disposition of Lucas's Rule 32 petition was appropriate.

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Welch, Burke, and Joiner, JJ., concur.

³Although this was not the reason for the circuit court's dismissal of this claim, we may nonetheless affirm the circuit court's judgment on this ground. See Moody v. State, 95 So. 3d 827, 833-34 (Ala. Crim. App. 2011), and McNabb v. State, 991 So. 2d 313, 333 (Ala. Crim. App. 2007), and the cases cited therein.



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01-CC-1994-003623.64
CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
ANNE-MARIE ADAMS, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

STATE OF ALABAMA)

V.)

LUCAS DAVID L)
Defendant.)

) Case No.: CC-1994-003623.64

ORDER

Petitioner's fourth Rule 32 is denied on the basis of each and every ground set forth in the State's Motion to Dismiss. The basis of this Rule 32 is the exact same as his previous Rule 32s in which he claimed that the Court did not have jurisdiction to sentence under the AHOA using previous certified convictions. The Court of Criminal Appeals specifically stated in its' Memorandum Opinion CR-10-0736 (page two of second paragraph)

"This claim is procedurally barred pursuant to Rule 32.2(b), Ala. R. Crim. P., because it was raised and addressed in previous petitions. Ex parte Lucas, 865 So. 2d 418, 423 (Ala. 2002); Lucas v. State, (CR-05-0021), 954 So. 2d 1150 (Ala. Crim. App. 2005) (table); Lucas v. State (CR-07-1497), 46 So. 3d 978 (Ala. Crim. App. 2009) (table); Bryant v. State, 29 So. 3d 928 (Ala. Crim. App. 2009). As such, the circuit court did not abuse its discretion in summarily dismissing the claim. Rule 32.7(d), Ala. R. Crim. P. "

Court dismisses on same grounds. Based on the successive nature of this Petition, the Circuit Clerk is ordered to tax the costs of this Petition against the Petitioner. The Clerk is ordered to withdraw funds from the Petitioner's DOC Inmate Account until all costs are paid in full.

Appendix-B

IN THE SUPREME COURT OF ALABAMA



October 13, 2017

1161134

Ex parte David L. Lucas. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: David L. Lucas v. State of Alabama) (Jefferson Circuit Court: CC-94-3623.64; Criminal Appeals : CR-16-0902).

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 13, 2017:

Writ Denied. No Opinion. Sellers, J. - Stuart, C.J., and Parker, Shaw, and Main, 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 13th day of October, 2017.

A handwritten signature in cursive script that reads "Julia Jordan Weller".

Clerk, Supreme Court of Alabama

Appendix-C

(3x)

**COURT OF CRIMINAL APPEALS
STATE OF ALABAMA**

D. Scott Mitchell
Clerk
Gerri Robinson
Assistant Clerk



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September 1, 2017

CR-16-0902

David L. Lucas v. State of Alabama (Appeal from Jefferson Circuit Court: CC94-3623.64)

NOTICE

You are hereby notified that on September 1, 2017, 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. Teresa T Pulliam, Circuit Judge
Hon. Anne-Marie Adams, Circuit Clerk
David L. Lucas, Pro Se
John J. Davis, Asst. Attorney General

Appendix-D

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