



IN THE SUPREME COURT OF ALABAMA

May 27, 2021

1200473

Ex parte Raymond Lee Bosarge. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Raymond Lee Bosarge v. State of Alabama) (Mobile Circuit Court: CC-97-3703.64; CC-97-3704.63; Criminal Appeals: CR-19-0737).

ORDER

The Petition for Writ of Certiorari filed by Raymond Lee Bosarge on March 6, 2021, having been fully considered,

IT IS ORDERED that the Petition is STRICKEN as untimely filed. See Ala. R. App. P. 2(c) & 39(c)(2).

Witness my hand this 27th day of May, 2021.

Julia Jordan Miller

Clerk of Court,
Supreme Court of Alabama

FILED
May 27, 2021
9:33 AM

Clerk
Supreme Court of Alabama

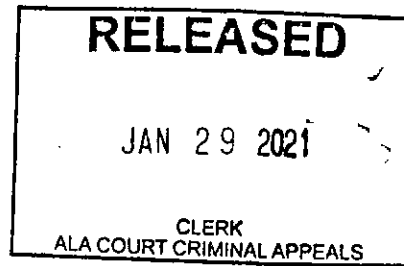
cc: D. Scott Mitchell
Hon. Jill Parrish Phillips
Raymond Lee Bosarge
Steven Marshall
Cecil Gordon Brendle, Jr.

Exh-A
pp 1 & 2

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REL: January 29, 2021



Notice: This unpublished memorandum should not be cited as precedent.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-19-0737

Raymond Lee Bosarge v. State of Alabama

Appeal from Mobile Circuit Court CC-97-3703.64; CC-97-3704.63

MEMORANDUM DECISION

WINDOM, Presiding Judge.

Raymond Lee Bosarge 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 1972 convictions for grand larceny and his resulting sentences of one year and one day in prison.¹

¹On the standard Rule 32 form, case numbers CC-97-3705.64 and CC-97-3704.63 are listed, and the circuit court docketed the case under those case numbers. However, in the supplement to the form, Bosarge

On January 24, 2020, Bosarge filed a standard Rule 32 form and a supplement in which he challenged his 1972 convictions for grand larceny. On March 13, 2020, the State filed a response and a motion to dismiss, noting that Bosarge's petition had been incorrectly docketed with the wrong case numbers. In addressing Bosarge's claims challenging his 1972 convictions, the State asserted that Bosarge's claims were nonjurisdictional claims and, therefore, were procedurally barred. On March 16, 2020, the circuit court summarily dismissed Bosarge's petition for the reasons asserted by the State. On March 31, 2020, the circuit court, in response to a filing by Bosarge claiming that the petition had been docketed under the wrong case numbers, issued an order acknowledging that the pleadings indicated that Bosarge had intended to file the petition in case numbers corresponding with his 1972 convictions; however, the circuit court stated:

"As to the Rule 32 Petition in these case[s], the Court finds that, based on Petitioner's assertion that it was filed in the wrong case numbers, and based on the content of the pleadings, the Petition, to the extent it was filed under these case numbers is DENIED, as filed in error."

(C. 60.) Bosarge filed a motion for reconsideration in which he argued that the circuit court erred when, on March 16, 2020, it adopted the State's proposed order dismissing the petition. This appeal follows.

On appeal, instead of reasserting the claims from his petition, Bosarge argues that the circuit court erred in adopting the State's proposed order. Bosarge claims that the order was clearly erroneous because the State treated his filing as a filing under Rule 32, Ala. R. Crim.

clearly challenged his 1972 convictions for grand larceny. The case numbers listed on the form correspond with Bosarge's 1998 convictions for first-degree rape and first-degree sexual abuse. The record does not indicate whether the circuit clerk or Bosarge listed the case numbers on the form. In filings following his petition, Bosarge requested that the circuit court docket the petition under the appropriate case numbers.

P., when, he says, Temporary Rule 20 applies to his filing because it was in effect at the time of his convictions.²

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"Alabama courts have consistently held that even when a trial court adopts verbatim a party's proposed order, the findings of fact and conclusions of law are those of the trial court and they may be reversed only if they are clearly erroneous." McGahee v. State, 885 So. 2d 191, 229-30 (Ala. Crim. App. 2003). "[T]he general rule is that, where a trial court does in fact adopt the proposed order as its own, deference is owed to that order in the same measure as any other order of the trial court." Ex parte Ingram, 51 So. 3d 1119, 1122 (Ala. 2010). Only "when the record before this Court clearly establishes that the order signed by the trial court denying postconviction relief is not the product of the trial court's independent judgment" will the circuit court's adoption of the State's proposed order be held erroneous. Ex parte Jenkins, 105 So. 3d 1250, 1260 (Ala. 2012). Ex parte Bosarge,

Bosarge argues, as he did in his postjudgment motion, that the adoption of the State's proposed order is erroneous because it improperly treated his filing as a filing pursuant to Rule 32, Ala. R. Crim. P., and applied the procedural bars to his claims. According to Bosarge, the circuit court should have considered his petition under Rule 20 of the Alabama Temporary Rules of Criminal Procedure because those rules were in effect at the time of his convictions. In support of this proposition, Bosarge cites to Hawkins v. State, 587 So. 2d 1290 (Ala. Crim. App. 1991), in which this Court held that Rule 20 of the Alabama Temporary Rules of Procedure, not Rule 32, Ala. R. Crim. P., governed all postconviction petitions in which the underlying case was commenced by indictment or

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²Because of the confusion surrounding the case numbers, the record includes two orders – each containing an adverse ruling to Bosarge's petition. Because Bosarge's petition clearly challenged his 1972 convictions, and because the circuit court initially dismissed the petition after addressing claims pertaining to those convictions, the fact that the petition was docketed incorrectly does not affect this Court's disposition of this appeal.

complaint before January 1, 1991, the effective date of Rule 32.

The holding in Hawkins, which was issued in 1991, was based on Rule 1.5, Ala. R. Crim. P., which has since been amended. At the time Hawkins was decided, Rule 1.5, Ala. R. Crim. P., provided that "[t]hese rules [the Rules of Criminal Procedure] shall govern all criminal proceedings commenced at or after 12:01 a.m., January 1, 1991." However, Rule 1.5 was amended effective April 22, 1992, to provide that "[t]hese rules shall govern all proceedings without regard to when the proceeding was commenced." In addition, Rule 32.4, Ala. R. Crim. P., specifically provides that "[a] proceeding under [Rule 32] displaces all post-trial remedies except post-trial motions under Rule 24 and appeal." Therefore, Bosarge's claim that his petition should have been considered under Rule 20 of the Alabama Temporary Rules of Procedure is without merit. Because Bosarge's petition was properly considered under Rule 32, Ala. R. Crim. P., we find no error on the part of the circuit court in adopting verbatim the State's proposed order.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

McCool, Cole, and Minor, JJ., concur. Kellum, J., concurs in the result.

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