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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2012-2013

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CR-04-0940

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**Anthony Ray Hinton**

**v.**

**State of Alabama**

**Appeal from Jefferson Circuit Court  
(CC-85-3363.10 and CC-85-3364.10)**

After Remand by the Alabama Supreme Court

KELLUM, Judge.

In 1986, Anthony Ray Hinton was convicted of two counts of capital murder and was sentenced to death. This Court and the Alabama Supreme Court affirmed Hinton's convictions and sentence on appeal. Hinton v. State, 548 So. 2d 547 (Ala.

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Crim. App. 1988) ("Hinton I"), aff'd, 548 So. 2d 562 (Ala. 1989) ("Hinton II"). In 1990, Hinton filed a Rule 32, Ala. R. Crim. P., petition for postconviction relief, in which he alleged, among other things, that his trial counsel had been ineffective for not hiring a qualified firearms-identification expert for his defense. After an evidentiary hearing, the circuit court denied Hinton's petition in 2005, finding, in relevant part, that Hinton's trial counsel had not been ineffective for not hiring a qualified firearms-identification expert because counsel had hired Andrew Payne to examine the evidence and to testify in his defense. This Court affirmed the denial of Hinton's petition on appeal, adopting the circuit court's finding. Hinton v. State, [Ms. CR-04-0940, April 28, 2006] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2006) ("Hinton III").

On certiorari review, the Alabama Supreme Court reversed this Court's judgment, holding that it was premature to address the issue whether trial counsel had been ineffective for not hiring a qualified firearms-identification expert because no specific finding of fact had been made by the circuit court, as required by Rule 32.9, Ala. R. Crim. P., as

to whether Andrew Payne, whom trial counsel had procured in Hinton's defense, was, in fact, qualified as an expert in firearms identification. Ex parte Hinton, [Ms. 1051390, October 17, 2008] \_\_\_ So. 3d \_\_\_ (Ala. 2008) ("Hinton IV"). The Court then remanded the case for this Court to remand the case "for the trial court to enter an order pursuant to Rule 32.9, Ala. R. Crim. P., making specific findings as to whether Andrew Payne was indeed qualified and competent to testify as a firearms-identification expert based on his knowledge, skill, experience, training, or education." Hinton IV, \_\_\_ So. 3d at \_\_\_. We note that while this case was pending on appeal, the circuit judge who had ruled on Hinton's Rule 32 petition and who had also presided over Hinton's original trial retired from the bench, and a different circuit judge was assigned to the case.

In accordance with the Alabama Supreme Court's instructions, this Court remanded this case for the circuit court "to conduct proceedings that are consistent with [the Supreme Court's] opinion." Hinton v. State, [Ms. CR-04-0940, December 19, 2008] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2008) (opinion after remand from the Alabama Supreme Court) ("Hinton

V"). On remand, the circuit court failed to comply with the Alabama Supreme Court's instructions; it did not make specific findings of fact regarding whether Andrew Payne was a qualified firearms-identification expert. Therefore, this Court remanded this case a second time, by order, for the circuit court to comply with the Alabama Supreme Court's opinion in Hinton IV. On second remand, the circuit court complied with the Supreme Court's opinion and issued a written order finding that Andrew Payne was, in fact, a qualified expert in firearms identification. This Court then affirmed the circuit court's judgment, holding that "[a]fter reviewing the record, we cannot say that the circuit court abused its discretion in finding that Payne was qualified as an expert in firearms identification" and that "[b]ecause Payne was a qualified expert in firearms identification, even if his qualifications did not match those of the State's experts, Hinton's claim that his trial counsel was ineffective for not procuring a qualified firearms-identification expert is meritless and his Rule 32 petition was properly denied on this ground by the circuit court." Hinton v. State, [Ms. CR-04-

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0940, August 26, 2011] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Crim. App. 2011) (opinion on return to second remand) ("Hinton VI").

On certiorari review, the Alabama Supreme Court again reversed this Court's judgment, this time holding that this Court had erred in applying an abuse-of-discretion standard of review in reviewing the circuit court's finding that Andrew Payne was a qualified firearms-identification expert because the circuit court's finding had been based on "the 'cold trial record'" and, thus, the circuit court "was in no better position than was an appellate court to make the determination it made." Ex parte Hinton, [Ms. 1110129, November 9, 2012] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2012) ("Hinton VII"). The Court then remanded this case to this Court for us "to apply a de novo standard of review in reviewing the circuit court's judgment that Payne was qualified to testify as a firearms-identification expert." Hinton VII, \_\_\_ So. 3d at \_\_\_.

In accordance with the Alabama Supreme Court's instructions, we have "review[ed] the circuit court's judgment that Payne was qualified to testify as a firearms-identification expert" under "a de novo standard of review," and we hold that the circuit court did not err in finding that

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Payne was qualified as an expert in firearms identification. See Hinton VI, in which this Court detailed the qualifications of Andrew Payne as gleaned from the record, set out the law in effect at the time of Hinton's trial, and explained why Payne was qualified as an expert in firearms identification. Therefore, the judgment of the circuit court is affirmed.

AFFIRMED.

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