

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2015-2016

1150416

Ex parte Derrick Sturdivant

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS**

(In re: Derrick Sturdivant

v.

State of Alabama)

**(Jefferson Circuit Court, CC-02-5943.60;
Court of Criminal Appeals, CR-14-1549)**

SHAW, Justice.

On December 11, 2015, the Court of Criminal Appeals, in an unpublished memorandum, affirmed the Jefferson Circuit Court's order denying Derrick Sturdivant's Rule 32, Ala. R. Crim. P., petition. Sturdivant v. State (No. CR-14-1549,

1150416

December 11, 2015), ___ So. 3d ___ (Ala. Crim. App. 2015) (table). In his brief on appeal in the Court of Criminal Appeals, Sturdivant, for the first time, raised an issue challenging the sentencing court's jurisdiction to enter his original sentence.¹ Following the Court of Criminal Appeals' affirmance, Sturdivant filed this petition for a writ of certiorari.

Although jurisdictional issues can generally be raised at any time, see Nunn v. Baker, 518 So. 2d 711 (Ala. 1987), the Court of Criminal Appeals "will not remand a case to the circuit court to hold an evidentiary hearing on a jurisdictional claim that was not presented in the petitioner's Rule 32 petition unless facts appear in the record affirmatively showing a lack of jurisdiction." Fincher v. State, 837 So. 2d 876, 881 (Ala. Crim. App. 2002). Nothing before this Court indicates that the record before the Court of Criminal Appeals affirmatively demonstrated that the sentencing court lacked jurisdiction, and we deny Sturdivant's petition for the writ of certiorari.

¹The merits of that claim have not been adjudicated in this case.

1150416

Nevertheless, if Sturdivant's claim "is jurisdictional in nature, [then Sturdivant] may file another Rule 32 petition raising this claim; the claim will not be subject to the procedural bars in Rule 32.2, Ala. R. Crim. P.; if pleaded properly, [Sturdivant] would be entitled to have an opportunity to present evidence to prove the claim." Fincher, 837 So. 2d at 882.

WRIT DENIED.

Stuart, Parker, Main, and Wise, JJ., concur.