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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2007-2008

CR-06-1889

Jose Nicolas Diego

v.

State of Alabama

Appeal from Winston Circuit Court
(CC-05-137)

BASCHAB, PRESIDING JUDGE

On May 17, 2006, the appellant, Jose Nicolas Diego, was convicted of murder, first-degree assault, and vehicular homicide. The trial court sentenced him to serve consecutive terms of twenty-five years in prison on the murder conviction

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and twenty years in prison on the first-degree assault conviction. The appellant did not appeal his convictions. On December 6, 2006, he filed a Rule 32 petition, challenging his convictions. After the State responded, the circuit court summarily denied his petition. This appeal followed.

In his petition, the appellant argued that he did not appeal his convictions through no fault of his own; that his convictions for both murder and vehicular homicide violate double jeopardy principles; and that his trial counsel rendered ineffective assistance. The State did not specifically refute the appellant's claims. Also, in its order denying the petition, the circuit court did not specifically address the claims. Because the appellant's claims could be meritorious, the circuit court erred in not addressing them.

Accordingly, we remand this case to the circuit court for that court to make specific, written findings of fact concerning each of the appellant's claims. On remand, the circuit court may require the State to respond specifically to the appellant's contentions and/or may conduct an evidentiary hearing. On remand, the circuit court shall take all

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necessary action to see that the circuit clerk makes due return to this court at the earliest possible time and within 56 days after the release of this opinion. The return to remand shall include the circuit court's written findings of fact and, if applicable, the State's response and/or a transcript of the evidentiary hearing.¹

REMANDED WITH INSTRUCTIONS.

McMillan, Shaw, Wise, and Welch, JJ., concur.

¹Because of our disposition of this case, we pretermitted discussion of any remaining claims the appellant may raise in his brief to this court.