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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2007-2008

CR-07-0470

Antonio Twan Thomas

v.

State of Alabama

Appeal from Montgomery Circuit Court
(CC-03-1088.60)

BASCHAB, PRESIDING JUDGE

On October 20, 2003, the appellant, Antonio Twan Thomas, pled guilty to two counts of first-degree robbery. The trial court sentenced him, as a habitual offender, to serve concurrent terms of life in prison. See §13A-5-9(c), Ala.

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Code 1975. The appellant did not appeal his convictions. On October 5, 2007, he filed a Rule 32 petition, challenging his convictions. After the State responded, the circuit court summarily dismissed the petition. This appeal followed.

The appellant argues that his sentences exceed the maximum authorized by law or are otherwise not authorized by law. Specifically, he contends that the trial court erroneously sentenced him as a habitual offender because one of the prior out-of-state convictions that was used to enhance his sentence was nolle prossed and because the other out-of-state convictions that were used to enhance his sentence would not constitute felonies in Alabama. The State did not refute the appellant's specific allegations. Also, the circuit court did not make any findings of fact regarding the appellant's specific allegations. Because the appellant's allegations 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 the appellant's allegations. On remand, the circuit court may require the State to respond specifically to

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the appellant's contentions and/or may conduct an evidentiary hearing. The circuit court shall take all 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.

REMANDED WITH INSTRUCTIONS.

McMillan, Wise, and Welch, JJ., concur; Shaw, J., concurs in the result.