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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2013-2014

CR-07-1208

Demetrius Avery Jackson, Jr.

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-06-1620)

On Return to Second Remand

BURKE, Judge.

On March 29, 2013, this Court remanded this case, in which the death penalty was imposed on Demetrius Avery Jackson, Jr., to the trial court for resentencing. This Court determined that the trial court's sentencing order was

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deficient because it included facts derived from another case; because it failed to address the nonstatutory mitigating evidence that was presented; and because it failed to adequately set out the specific reasons for giving the jury's recommendation of life imprisonment without the possibility of parole the weight that the court gave it. The circuit court was directed to reweigh the aggravating circumstances, the statutory mitigating circumstances, and the nonstatutory mitigating circumstances.

On return to remand, the circuit court has filed an amended sentencing order in which the court has properly included the facts of the present offense. It considered as evidence of nonstatutory mitigating circumstances the testimony of Jackson's mother concerning his upbringing and having been abused as a child, as well as his relationship with his father. The court found "that [Jackson's] home life, and negative influence of the [Jackson's] father, is a non-statutory mitigating circumstance." (Record on second return to remand, 7.)

As to the reasons the court afforded the weight to the jury's advisory verdict that it did, the court stated:

"As for the jury's recommendation of life in prison without the possibility for parole, the Court considers this to be a very strong nonstatutory mitigating circumstance, especially in light of the fact that the jury made its recommendation by a vote of 10 to 2 in favor of life in prison without the possibility for parole, and the record contains no evidence that the trial court was aware of any information not known to the jury.

"In Ex parte Tomlin, 909 So. 2d 283 (Ala. 2003), the Alabama Supreme Court stated:

"'The weight to be given [a jury's recommendation of life imprisonment without the possibility of parole] should depend on the number of jurors recommending a sentence of life imprisonment without parole." [Ex parte Carroll, 852 So. 2d 833, 836 (Ala. 2002).] In Carroll we found that a jury's 10-2 vote for a sentence of life imprisonment without the possibility of parole demonstrated 'overwhelming support' of such a sentence. 852 So.2d at 837. ...

"'The weight to be given [a jury's recommendation of life imprisonment without the possibility of parole] should depend ... also upon the strength of the factual basis for such a recommendation in the form of information known to the jury,... or a recommendation of leniency by the victim's family.' Carroll, 852 So. 2d at 836.

"'The jury's recommendation [of life imprisonment without the possibility of parole] may be overridden based on information known only to the trial court and not to the jury, when such information can properly be used to undermine a mitigating circumstance. Carroll 852 So. 2d at 836."

"Tomlin, 909 So. 2d 286-87.

"After a thorough review of the entire record in this case, the Court finds that there was no information known to the Court that was not known by the jury, and no such information was previously cited by this Court in its Sentencing Order.

"Further, the Court finds that four members of the family of the victim, when speaking to the Court at the sentencing hearing, specifically testified that they were not asking the Court to sentence [Jackson] to death. In fact, the only witnesses at the sentencing hearing to ask for a death sentence were two public officials: a State Representative and the Fairfield Police Chief.

"Just as this Court did in its first sentencing order, this Court again finds no evidence to suggest that the jury's recommendation was swayed by emotion, prejudice, or any other arbitrary factors.

"Accordingly, this Court gives great weight to the jury's recommendation and finds that the 'jury's 10-2 vote for a sentence of life imprisonment without the possibility of parole demonstrated "overwhelming support" of such a sentence.' Carroll, 852 So. 2d at 837."

(Record on return to second remand, 7-8.)

Thereafter, in its order, the circuit court reweighed the aggravating, statutory mitigating, and nonstatutory mitigating circumstances, and concluded:

"The Court finds that there are nonstatutory mitigating circumstances present in this case. The first is [Jackson's] difficult family life and history of abuse. The Court gives this nonstatutory mitigating circumstance moderate weight. Similarly,

the fact that the family of the deceased did not request a death sentence is given moderate weight as a nonstatutory mitigating circumstance. By themselves, these mitigating circumstances would not outweigh the aggravating circumstances presented in this case.

"However, when coupled with the jury's recommendation of life imprisonment without the possibility of parole, which the Court gives great weight and finds to be overwhelming support for such a sentence, the Court finds the nonstatutory mitigating circumstances do outweigh the aggravating circumstances.

"Therefore, after consideration of all the matters that were presented to this Court, the presentence investigation report, the testimony given at trial, during the penalty phase before the jury, and at the sentencing hearing before this Court, both in aggravation and mitigation, and after the analysis of the aggravating and mitigating circumstances set out in the court's original sentencing order and this amended sentencing order, and for the reasons stated in this order, the Court does now find that the aggravating circumstances do not outweigh the mitigating circumstances, and the Court does hereby reverse itself and sentence [Jackson] to life in prison without the possibility for parole."

(Record on second return to remand, 8-9.) Thus, the circuit court has sentenced Jackson to life imprisonment without the possibility of parole.

Because Jackson is no longer sentenced to death, the plain-error analysis mandated by § 13A-5-53, Ala. Code 1975,

is no longer necessary or appropriate.¹ However, we now consider Jackson's claim that the cumulative effect of the errors at trial requires reversal of his conviction. Jackson argues simply that "[f]or example, there were repeated instances of improper references to Mr. Jackson's prior crimes, multiple improper references to hearsay statements of Elice Jackson, several errors undermining the burden of proof, and numerous errors calling into question the reliability of the death sentence." (Jackson's brief, at 179.) Jackson includes a footnote that lists numerical references to a number of the issues that he raised in his brief. Jackson's inclusion of issues concerning the validity and appropriateness of the death penalty to his case are moot.

"The Alabama Supreme Court has set forth the cumulative-error rule as follows: '[W]hile, under the facts of a particular case, no single error among multiple errors may be sufficiently prejudicial to require reversal under Rule 45, if the accumulated errors have "probably injuriously affected substantial rights of the parties," then the cumulative effect of the errors may require

¹This Court pretermitted discussion of the analysis of this case pursuant to the required statutory guidelines.

reversal.' Ex parte Woods, 789 So. 2d 941, 942-43 n. 1 (Ala. 2001) (quoting Rule 45, Ala. R. App. P.). Applying this standard to Lewis's allegation of cumulative error, we have scrupulously reviewed the record and find no evidence that the cumulative effect of any of the individually nonreversible errors in this case affected Lewis's substantial rights at trial."

"'Lewis v. State, [24 So. 3d 480, 538 (Ala. Crim. App. 2006)].'

"Sharifi v. State, 993 So. 2d 907, 946-47 (Ala. Crim. App. 2008)."

Petric v. State, [Ms. CR-09-0386, February 15, 2013] ___ So. 3d ___, ___ (Ala. Crim. App. 2013).

Each of the issues cited by Jackson has been decided adversely to his claim. The cumulative effect of any individually nonreversible errors did not affect Jackson's substantial rights. See also Ex parte Walker, 972 So. 2d 737, 747 (Ala. 2007) ("Because Walker has not demonstrated that his claims of prosecutorial misconduct are any stronger when the instances of misconduct are considered cumulatively, we find no error.").

This Court has previously affirmed Jackson's attempted-murder conviction and the resulting sentence in our opinion on

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return to remand. Based on the foregoing, the circuit court's decision as to Jackson's capital-murder conviction and sentencing is due to be affirmed.

AFFIRMED.

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