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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2015-2016

CR-10-0642

Michael Brandon Kelley

v.

State of Alabama

Appeal from St. Clair Circuit Court
(CC-09-73)

On Remand from the Alabama Supreme Court

WINDOM, Presiding Judge.

On September 5, 2014, this Court affirmed Michael Brandon Kelley's two convictions for capital murder, see §§ 13A-5-40(a)(1) and 13A-5-40(a)(8), Ala. Code 1975, his sentences of death for those convictions, and his one

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conviction for sexual torture, see § 13A-6-65.1, Ala. Code 1975. Kelley v. State, [Ms. CR-10-0642, Sept. 5, 2014] ___ So. 3d ___ (Ala. Crim. App. 2014). On February 24, 2015, the Alabama Supreme Court granted Kelley's petition for a writ of certiorari to review whether this Court had jurisdiction to affirm his sexual-torture conviction.

On November 6, 2015, the Alabama Supreme Court issued an opinion in which it determined that this Court did not have jurisdiction to affirm Kelley's conviction for sexual torture. Ex parte Kelley, [Ms. 1131451, Nov. 6, 2015] ___ So. 3d ___ (Ala. 2015). Specifically, the Alabama Supreme Court determined that the circuit court had not pronounced a sentence for Kelley's sexual-torture conviction; therefore, there had been no judgment of conviction under § 12-22-130, Ala. Code 1975, from which to appeal. ___ So. 3d at ___. Because there was no judgment of conviction relating to the sexual-torture charge, any appeal from that charge was not ripe. ___ So. 3d at ___. Consequently, this Court lacked jurisdiction to affirm that conviction. ___ So. 3d at ___.

After determining that this Court lacked jurisdiction to affirm Kelley's conviction for sexual torture, the Alabama

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Supreme Court "reverse[d] the Court of Criminal Appeals' judgment insofar as it affirm[ed] Kelley's sexual-torture conviction, and ... remand[ed] the case for proceedings consistent with [its] opinion." ___ So. 3d at ___. In accordance with the Alabama Supreme Court's opinion in Ex parte Kelley, [Ms. 1131451, Nov. 6, 2015] ___ So. 3d ___ (Ala. 2015), this Court's judgment in Kelley v. State, [Ms. CR-10-0642, Sept. 5, 2014] ___ So. 3d ___ (Ala. Crim. App. 2014), is vacated to the extent it addressed and affirmed Kelley's conviction for sexual torture, and Kelley's appeal from that conviction is dismissed.

APPEAL DISMISSED IN PART.

Welch, Kellum, Burke, and Joiner, JJ., concur.