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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2017-2018

CR-14-1523

Michael Jerome Lewis

v.

State of Alabama

Appeal from Houston Circuit Court
(CC-97-1574.60)

WELCH, Judge.

Michael Jerome Lewis, an inmate on death row at Holman Correctional Facility, appeals the circuit court's denial of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P. We remand the case with instructions.

In September 2003, Lewis was convicted of murdering Timothy John Kaye during a kidnapping, an offense defined as capital by § 13A-5-40(a)(1), Ala. Code 1975. The jury recommended, by a vote of 10 to 2, that Lewis be sentenced to death. The circuit court followed the jury's recommendation and sentenced Lewis to death. Lewis appealed. In April 2007, this Court remanded the case to the Houston Circuit Court for that court to hold a Batson v. Kentucky, 476 U.S. 79 (1986), hearing. See Lewis v. State, 24 So. 3d 480 (Ala. Crim. App. 2007). Lewis's conviction and sentence were affirmed on return to remand. See Lewis v. State, 24 So. 3d 480 (Ala. Crim. App. 2007) (opinion on return to remand), *aff'd*, 24 So. 3d 540 (Ala. 2009). The United States Supreme Court denied certiorari review. See Lewis v. Alabama, 558 U.S. 1078 (2009). This Court issued a certificate of judgment on June 17, 2009. See Rule 41, Ala. R. App. P.

In May 2010, Lewis filed a timely petition for postconviction relief attacking his conviction and sentence of death. Lewis filed amended petitions in April 2011, August 2011, and June 2014. After a two-day evidentiary hearing in August 2014, the circuit court issued a four-page order

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denying Lewis's requested postconviction relief. Lewis then appealed to this Court.

Lewis first argues that this case should be remanded to the Houston Circuit Court for that court to fully comply with the provisions of Rule 32.9(d), Ala. R. Crim. P., by making specific findings of facts concerning all the issues raised in Lewis's third amended petition. The State concedes that the circuit court did not make findings of facts concerning all the claims raised in Lewis's petition.

Indeed, the majority of the circuit court's order consists of reciting the standard of review used in evaluating claims of ineffective-assistance-of-counsel. The only "findings" consist of the following:

"The Court finds that the conflict of interest claims that Mr. [James W.] Parkman's prior representation of [state witnesses] Mr. [Johnny] Causey and Mr. [Mike] Harger adversely affected Mr. Parkman's performance are without merit. The petitioner has not shown that a conflict of interest actually affected the quality of Mr. Parkman's representation or dampened counsel's ardor of his defense in order to placate another client. The petitioner has not proven that counsel was ineffective or that the petitioner did not receive effective assistance of counsel in accordance with constitutional standards because of a conflict of interest.

". . . .

"The Court finds that the defendant's attorneys were not such as to undermine the proper functioning on the adversarial process so that the trial or appeal of this case could not be relied upon to produce a just result. The Court finds that counsel's assistance was reasonable and effective considering all of the circumstances of the case. The Court further finds that the decisions made by counsel concerning the trial and appeal of this case and his trial strategy was the result of reasonable, professional judgment."

(C. 1705-1706.) The circuit court's "findings" are merely generalized conclusions that were not sufficient to comply with the specific requirements of Rule 32.9(d), Ala. R. Crim. P.

The record also reflects that within 30 days of the circuit court's issuing its order denying the petition, Lewis filed a "Motion to Reconsider, Alter and Amend Judgement." (C. 1709-30.) In that motion, Lewis argued that the circuit court failed to comply with Rule 32.9(d), Ala. R. Crim. P. (C. 1717-18.) The circuit court did not rule on this motion before it lost jurisdiction of the case. See Loggins v. State, 910 So. 2d 146, 149 (Ala. Crim. App. 2005) (noting that trial court only retains jurisdiction of postconviction petition for only 30 days after ruling issued and that no postjudgment motion extends the jurisdiction of the court

beyond that period). The circuit court issued a ruling on Lewis's postjudgment motion more than 60 days after its ruling on the postconviction petition.

Rule 32.9, Ala. R. Crim. P., provides that when an evidentiary hearing is held on a postconviction petition, the court "shall make specific findings of fact relating to each material issue of fact presented." (Emphasis added.) Rule 32.9(d), Ala. R. Crim. P. The Alabama Supreme Court has classified Rule 32.9(d), Ala. R. Crim. P., as a "mandatory" provision of Rule 32. See Ex parte McCall, 30 So. 3d 400, 404 (Ala. 2008).

This Court has consistently remanded cases when no findings of fact are made by the circuit court following an evidentiary hearing on a postconviction petition.

"Although we recognize that the trial courts of this state labor under a heavy caseload, and that requiring the trial court to prepare an order addressing each of the material allegations presented in the Rule 32 evidentiary hearing only adds to this already heavy burden, we must nonetheless remand this cause to the trial court, with instructions that it enter specific findings of fact 'relating to each material issue of fact presented.' Rule 32.9(d), Ala. R. Crim. P. (Emphasis added.) See also, Ex parte Walker, 652 So. 2d 198 (Ala. 1994); Smith v. State, 665 So. 2d 954

(Ala. Cr. App. 1994); Kolmetz v. State, 649 So. 2d 1342 (Ala. Cr. App. 1994). As we have stated, '[a] statement of the basis of the trial court's decision is essential to afford the appellant due process.' Owens v. State, 666 So. 2d 31, 32 (Ala. Cr. App. 1994).'"

Dedeaux v. State, 976 So. 2d 1045, 1049 (Ala. Crim. App. 2005), quoting Anclin v. State, 719 So. 2d 855, 857 (Ala. Crim. App. 1996).

"This is a complicated case; Getz asserts a multitude of ineffective-assistance-of-counsel claims along with several other contentions. Our review of the allegations Getz raises in his brief on appeal is hampered because the circuit court failed to make written findings of fact concerning each material issue of fact presented. Indeed, it would be premature for this Court to review the issues without the circuit court's first making such findings of fact. See Ex parte Grau, 791 So. 2d 345, 346-47 (Ala. 2000); Adkins v. State, 930 So. 2d 524, 530 (Ala. Crim. App. 2001)."

Getz v. State, 984 So. 2d 1221, 1222 (Ala. Crim. App. 2006).

Here, 13 witnesses testified at the evidentiary hearing on Lewis's postconviction petition, and Lewis's third amended petition consists of 133 pages of arguments and issues. (C. 1070-1203.) It would be premature for this Court to consider the claims raised on appeal without the circuit court's findings of fact. See Ex parte Grau, 791 So. 2d 345 (Ala. 2000). Therefore, in accordance with Rule 32.9(d), Ala. R.

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Crim. P., this case is hereby remanded to the Houston Circuit Court for that court to make findings of fact concerning the claims raised in Lewis's third amended postconviction petition. We note that no findings of fact are necessary on those claims that the circuit court found were procedurally barred.¹ Due return should be filed in this Court within 90 days from the date of this opinion.

REMANDED WITH INSTRUCTIONS.

Kellum, Burke, and Joiner, JJ., concur. Windom, P.J., recuses herself.

¹The circuit court stated the following: "The Court finds that the Batson [v. Kentucky, 476 U.S. 79 (1986),] claim; the prosecutorial misconduct claims; accomplice instruction claim; claim addressed to the court's instructions to the jury; the Brady [v. Maryland, 373 U.S. 83 (1963)] claim; were addressed at trial or on direct appeal and are therefore dismissed. ..." (C. 1706.)