REL: November 16, 2018

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-16-1311

Devin Darnell Thompson

v.

State of Alabama

Appeal from Fayette Circuit Court
(CC-03-62.60)

WELCH, Judge.

Devin Darnell Thompson, an inmate on death row at Holman Correctional Facility, appeals the Fayette Circuit Court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., attacking his capital-murder convictions and sentences of death.

In 2005, Thompson was convicted of six counts of capital murder for murdering Fayette Police Officers Arnold Strickland and James Crump, and police dispatcher Leslie Mealer, during the course of a robbery. The jury recommended, by a vote of 10 to 2, that Thompson be sentenced to death. The circuit court accepted the jury's recommendation and sentenced Thompson to death.

On direct appeal, this Court affirmed Thompson's convictions and sentences of death. See Thompson v. State, 153 So. 3d 84 (Ala. Crim. App. 2012). The Alabama Supreme Court and the United States Supreme Court denied certiorari review. See Thompson v. State, 153 So. 3d 191 (Ala. 2014); Thompson v. Alabama, 574 U.S. ___, 135 S.Ct. 233 (2013). This Court issued its certificate of judgment on May 6, 2014.

In April 2015, Thompson filed a timely petition for postconviction relief. In February 2016, Thompson filed an amended petition. The State filed a response and moved to dismiss the petition in June 2016. In July 2017, the circuit court issued a two-page order summarily dismissing Thompson's postconviction petition. This appeal followed.

On direct appeal, this Court stated the following facts

surrounding Thompson's convictions:

> "The State's evidence tended to show the following. At approximately 6:00 a.m. on the morning of June 3, 2003, Tim Brown, a paramedic with the Fayette Medical Center, was dispatched to the Fayette Police Department. Brown testified that when he approached the station he saw Mealer's body lying on the other side of the door to the police station, which was locked. After he forced his way inside, Brown said, he discovered that Mealer had been shot in the head. He proceeded through the building and found the bodies of Officer Crump and Officer Strickland. Both, he said, had been shot in the head and were lying in a pool of blood.
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> "Testimony showed that at around 3:00 a.m. on the morning of June 3, 2003, Officer Crump and Officer Strickland approached a vehicle parked in the lot of a local restaurant and found Thompson asleep in the vehicle. The dispatcher informed them that the vehicle had been stolen, and the officers took Thompson into custody.
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> "While the officers were booking Thompson they discovered that a dry-cleaning business, near where the car had been stolen, had been burglarized and clothing had been taken from that business. A shoe print had been discovered at the scene of that burglary. The officers removed Thompson's handcuffs in order to take his fingerprints and removed one of his shoes to get a shoe print.
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> "While Thompson was being fingerprinted, he took Strickland's .40-caliber service pistol and shot Strickland in the head. Thompson then crossed the hall and shot Officer Crump in the head. As Thompson walked toward the exit of the police station he encountered Mealer. He shot Mealer multiple times and left the station.
>
> "Thompson attempted to reenter the station when

> he realized that one of his shoes was still inside, but the door had automatically locked when it closed, and he was unable to reenter. Thompson proceeded to the Fayette Fire Station, which was located in the same building as the Fayette Police Department, and told two firemen that 'something bad had happened up front.' Thompson then stole a police cruiser and fled the scene. He was arrested later that day near Columbus, Mississippi. The pistol Thompson had taken from Officer Strickland was found in the police cruiser.
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> "At trial, Thompson did not dispute that he shot and killed the police officers and the dispatcher. His defense was that he was not guilty by reason of mental disease or defect. Thompson presented expert testimony to the effect that he was suffering from post-traumatic stress disorder ('PTSD') at the time of the murders and that he was in a dissociative state; therefore, he argued, he was not responsible for his actions. The State countered Thompson's expert testimony by presenting expert testimony to the effect that Thompson was not in a dissociative state when he committed the murders."

Thompson, 153 So. 3d at 101-02.

Standard of Review

Thompson appeals the circuit court's summary dismissal of his Rule 32 petition attacking his capital-murder convictions and sentence of death. According to Rule 32.3, Ala. R. Crim. P., "[t]he petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief."

Rule 32.6(b), Ala. R. Crim. P., addresses the burden of

pleading and states:

> "Each claim in the petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings."

(Emphasis added.)

> "The burden of pleading under Rule 32.3 and Rule 32.6(b) is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b). See Bracknell v. State, 883 So. 2d 724 (Ala. Crim. App. 2003)."

Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006). "The pleading requirements of Rule 32 apply equally to capital cases in which the death penalty has been imposed." Taylor v. State, 157 So. 3d 131, 140 (Ala. Crim. App. 2010).

"The sufficiency of pleadings in a Rule 32 petition is a question of law. 'The standard of review for pure questions of law in criminal cases is de novo. Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003).'" Ex parte Beckworth, 190 So. 3d 571, 573 (Ala. 2013).

> "Although postconviction proceedings are civil in nature, they are governed by the Alabama Rules of Criminal Procedure. See Rule 32.4, Ala. R. Crim. P. The 'notice pleading' requirements relative to civil cases do not apply to Rule 32 proceedings. 'Unlike the general requirements related to civil cases, the pleading requirements for postconviction petitions are more stringent....' Daniel v. State, 86 So. 3d 405, 410–11 (Ala. Crim. App. 2011). Rule 32.6(b), Ala. R. Crim. P., requires that full facts be pleaded in the petition if the petition is to survive summary dismissal. See Daniel, supra. Thus, to satisfy the requirements for pleading as they relate to postconviction petitions, Washington was required to plead full facts to support each individual claim."

Washington v. State, 95 So. 3d 26, 59 (Ala. Crim. App. 2012).

In discussing the pleading requirements of Rule 32.6(b), Ala. R. Crim. P., we have stated:

> "'Rule 32.6(b) requires that the petition itself disclose the facts relied upon in seeking relief.' Boyd v. State, 746 So. 2d 364, 406 (Ala. Crim. App. 1999). In other words, it is not the pleading of a conclusion 'which, if true, entitle[s] the petitioner to relief.' Lancaster v. State, 638 So. 2d 1370, 1373 (Ala. Crim. App. 1993). It is the allegation of facts in pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala. R. Crim. P., to present evidence proving those alleged facts."

Boyd v. State, 913 So. 2d 1113, 1125 (Ala. Crim. App. 2003).

The majority of claims raised by Thompson in his amended

petition involve allegations that his counsel's performance was deficient at his trial and sentencing. When considering a claim of ineffective assistance of counsel we apply the standard articulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). The petitioner must establish: (1) that counsel's performance was deficient; and (2) that he was prejudiced by that deficient performance. When pleading claims of ineffective assistance of counsel, this Court has stated:

> "To sufficiently plead an allegation of ineffective assistance of counsel, a Rule 32 petitioner not only must 'identify the [specific] acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment,' Strickland v. Washington, 466 U.S. 668, 690, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), but also must plead specific facts indicating that he or she was prejudiced by the acts or omissions, i.e., facts indicating 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' 466 U.S. at 694, 104 S.Ct. 2052. A bare allegation that prejudice occurred without specific facts indicating how the petitioner was prejudiced is not sufficient."

Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006).

> "[T]o satisfy the burden of pleading a claim of ineffective assistance of counsel, a petitioner cannot merely allege that prejudice occurred or that there was some conceivable effect on the outcome of the trial; a petitioner must allege 'specific facts

> indicating how the petitioner was prejudice,' i.e., how the outcome of the trial would have been different."

Mashburn v. State, 148 So. 3d 1094, 1116 (Ala. Crim. App. 2013).

At the pleading stage of postconviction proceedings, the petitioner has no burden to plead the absence of a ground of preclusion. See Ex parte Beckworth, 190 So. 3d 571, 575 (Ala. 2013) ("Beckworth's Rule 32 petition should not have been dismissed on the ground that his claim for relief under Rule 32.1(a) lacked allegations negating the preclusive bars of Rule 32.2(a)(3) and (5).").

Moreover,

> "[a]n evidentiary hearing on a [Rule 32] petition is required only if the petition is 'meritorious on its face.' Ex parte Boatwright, 471 So. 2d 1257 (Ala. 1985). A petition is 'meritorious on its face' only if it contains a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the facts relied upon (as opposed to a general statement concerning the nature and effect of those facts) sufficient to show that the petitioner is entitled to relief if those facts are true. Ex parte Boatwright, supra; Ex parte Clisby, 501 So. 2d 483 (Ala. 1986)."

Moore v. State, 502 So. 2d 819, 820 (Ala. 1986). When considering the sufficiency of pleadings, the postconviction court must consider each claim individually. Mashburn, 148

So. 3d at 1117. "[T]he full factual basis for the claim must be included in the petition itself." Mashburn, 148 So. 3d at 1124. Last, "'[w]hen reviewing a circuit court's rulings made in a postconviction petition, we may affirm a ruling if it is correct for any reason.'" Washington v. State, 95 So. 3d 26, 37 (Ala. Crim. App. 2012), quoting Smith v. State, 122 So. 3d 224, 227 (Ala. Crim. App. 2011).

With these principles in mind, we review the claims raised by Thompson in his brief to this Court.

I.

Thompson argues that the postconviction court erred in summarily dismissing his petition without first making findings of fact concerning each claim raised. Specifically, he argues that he raised many claims of ineffective assistance of trial counsel and because the judge presiding over the postconviction proceedings was not the same judge who presided over Thompson's trial, the postconviction court could not summarily dismiss his ineffective assistance of counsel claims. He further argues that he had no burden to prove his claims by a preponderance of the evidence at the pleading stage of the postconviction proceedings.

"Rule 32.9(d), Ala. R. Crim. P., requires that if an evidentiary hearing is conducted on the Rule 32 petition, '[t]he court shall make specific findings of fact relating to each material issue of fact presented.'" Anglin v. State, 719 So. 2d 855, 857 (Ala. Crim. App. 1996) (emphasis added). "Contrary to [the appellant's] argument, '"Rule 32.9(d), Ala. R. Crim. P., requires the circuit court to make specific findings of fact only after an evidentiary hearing or the receipt of affidavits in lieu of a hearing."' Daniel v. State, 86 So. 3d 405, 412 (Ala. Crim. App. 2011), quoting Chambers v. State, 884 So. 2d 15, 19 (Ala. Crim. App. 2003).

> "No evidentiary hearing was held in this case -- the circuit court summarily dismissed Daniel's petition. 'Because the trial court did not hold an evidentiary hearing, it was not required to make specific findings of facts as to each claim.' Beckworth v. State, [Ms. CR-07-0051, May 1, 2009] ___So. 3d ___, ___ (Ala. Crim. App. 2009). '[R]ule 32.9(d), Ala. R. Crim. P., requires findings of fact only if an evidentiary hearing is held. Findings are not required if the petition is dismissed.' Fowler v. State, 890 So. 2d 1101, 1103 (Ala. Crim. App. 2004). 'Rule 32.9(d), Ala. R. Crim. P., requires the circuit court to make specific findings of fact only after an evidentiary hearing or the receipt of affidavits in lieu of a hearing.' Chambers v. State, 884 So. 2d 15, 19 (Ala. Crim. App. 2003). See also Ex parte McCall, 30 So. 3d 400 (Ala. 2008). The circuit court did not err in failing to make written findings of fact concerning Daniel's claims."

Daniel, 86 So. 3d at 412.

Also, in Bryant v. State, 181 So. 3d 1087 (Ala. Crim. App. 2011), we stated:

> "[A] circuit court may, in some circumstances, summarily dismiss a postconviction petition based on the merits of the claims raised therein. Rule 32.7(d), Ala. R. Crim. P., provides:
>
> > "'If the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings, the court may either dismiss the petition or grant leave to file an amended petition. Leave to amend shall be freely granted. Otherwise, the court shall direct that the proceedings continue and set a date for hearing.'
>
> "'"Where a simple reading of the petition for post-conviction relief shows that, assuming every allegation of the petition to be true, it is obviously without merit or is precluded, the circuit court [may] summarily dismiss that petition."' Bishop v. State, 608 So. 2d 345, 347-48 (Ala. 1992) (emphasis added) (quoting Bishop v. State, 592 So. 2d 664, 667 (Ala. Crim. App. 1991) (Bowen, J., dissenting)). See also Hodges v. State, 147 So. 3d 916, 946 (Ala. Crim. App. 2007) (a postconviction claim is 'due to be summarily dismissed [when] it is meritless on its face')."

181 So. 3d at 1102.

Neither this Court or the Alabama Supreme Court has ever

held that a new judge presiding over postconviction proceedings may not dismiss a petition on the merits because that judge did not preside over the petitioner's trial. Indeed, there is no such limitation in Rule 32.7(d), Ala. R. Crim. P.

Also, while we are aware that Thompson had no burden to prove his claims in the pleading stage, this Court has frequently noted that the burden of pleading in Rule 32, Ala. R. Crim. P., is a "heavy burden" and that "full facts" are required to survive the pleading stage of a postconviction proceeding. Based on the following, we hold that Thompson's postconviction petition was properly summarily dismissed.

II.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel's performance was deficient because counsel failed to object to the State's evidence and failed to present evidence at his hearing for treatment as a Youthful Offender ("YO").

In Thompson's amended petition, he pleaded the following, in part:

> "Trial counsel's failure to present any evidence in support of Mr. Thompson's application converted

> the record of the hearing on the Youthful Offender Application into an entirely one-sided story, with the emphasis only on the tragic events of June 7, 2003. Trial counsel did not present any witness about Mr. Thompson's family circumstances, mental status, or even remorse. ... Trial counsel did not present any mental health information for Mr. Thompson at this hearing despite the fact that by September 22, 2003, Dr. Marianne Rosenzweig, a clinical psychologist, had already met with Mr. Thompson three times and had scored and interpreted one of her tests administered to Mr. Thompson."

(C. 146-48.)

This claim was correctly summarily dismissed; the pleadings contain mere conclusions with no recitation of specific facts to support those conclusions. Thompson failed to specifically plead what evidence counsel should have presented at the YO hearing that would have supported his application. Nor did Thompson plead what medical evidence Dr. Marianne Rosenzweig could have presented at the YO hearing.[1] Therefore, Thompson failed to comply with the full-fact pleading requirements of Rule 32.3 and Rule 32.6(b), Ala. R. Crim. P., and this claim was correctly dismissed on that basis.

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[1]In his appellate brief, Thompson argues facts that should have been pleaded in his postconviction petition. Thompson states that Dr. Rosenzweig could have presented evidence concerning Thompson's post traumatic stress disorder.

In Hyde v. State, this Court addressed an identical claim:

> "Hyde alleged that [his trial counsel] failed to submit 'materials or information' in support of the application for youthful-offender status (C. 76); however, Hyde failed to identify what materials and information he believes should have been submitted. Hyde also alleged that [trial counsel] failed to make any argument regarding Hyde's 'family circumstances, education, substance abuse, or remorse, or present any other relevant evidence' (C. 77); however, Hyde failed to allege exactly what information regarding his family circumstances, education, substance abuse, or remorse he believes [trial counsel] should have presented and/or argued. Therefore, Hyde failed to plead sufficient facts to satisfy the pleading requirements of Rule 32.3 and 32.6(b)."

Hyde, 950 So. 3d at 359.

Moreover,

> "[i]n determining whether to treat a defendant as a youthful offender, the trial court has nearly absolute discretion. Morgan v. State, 363 So. 2d 1013 (Ala. Cr. App. 1978); see also, Ex parte Farrell, 591 So. 2d 444, 449–50, n. 3 (Ala. 1991). There is no set method for considering a motion requesting such treatment. Edwards v. State, 294 Ala. 358, 317 So. 2d 512 (1975). However, the Youthful Offender Act, § 15–19–1, Ala. Code 1975, requires that the court conduct a factual investigation into the defendant's background. Ware v. State, 432 So.2d 555 (Ala. Cr. App. 1983). Generally, the trial court considers the nature of the crime charged, any prior convictions, the defendant's age, and any other matters deemed relevant by the court. Clemmons v. State, 294 Ala.

> 746, 321 So. 2d 238 (1975). Moreover, the trial court need not articulate on the record its reasons for denying the defendant youthful offender status. Garrett v. State, 440 So. 2d 1151, 1152–53 (Ala. Cr. App. 1983), cert. denied (1983). Accord, Goolsby v. State, 492 So. 2d 635 (Ala. Cr. App. 1986)."

Reese v. State, 677 So. 2d 1239, 1240 (Ala. Crim. App. 1995).

A review of the trial record[2] shows that, at the conclusion of the YO hearing, the circuit court stated:

> "Based on the investigation and examination of the Court to determine [Thompson's] youthful offender petition, or the request to be treated as a youthful offender, the Court has considered the report of the investigation of the Alabama Board of Pardons and Paroles, also the offer of proof as agreed upon by [Thompson] and the State for the purposes of this hearing only, including the statement of [Thompson], and also a review of a crime scene videotape, and the Court finds that based upon that, the nature of the fact situation, the manner in which the crime was executed, including the use of a firearm, that the petition for youthful offender is denied."

(R. 30-31) (emphasis added).

The circuit court denied Thompson's application for YO status based on the nature of the crime charged -- a triple homicide involving the shooting of two police officers and a police dispatcher. "[W]e hold that the nature of the fact

[2]We have taken judicial notice of the record in Thompson's direct appeal. See Nettles v. State, 731 So. 2d 26, 629 (Ala. Crim. App. 1998).

situation on which a charge is based may, alone, be a sufficient reason for denying youthful offender status." Ex parte Farrell, 591 So. 2d 444, 449 (Ala. 1991). Thus, any argument concerning Thompson's mental health and his family background would not have changed the circuit court's decision to deny YO status. Cf. Staton v. State, 902 So. 2d 102, 117 (Ala. Crim. App. 2003) (holding that attorney was not ineffective for failing to request YO status when he knew that such a request would be futile). Thus, Thompson suffered no prejudice as a result of counsel's actions at the YO hearing, and this claim was correctly summarily dismissed pursuant to Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

III.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel's performance was ineffective for advising Thompson to waive his right to move for a change of venue. Specifically, he argues that he could not obtain a fair and impartial trial in Fayette County because, he says, the pretrial publicity in the case saturated the community.

The majority of Thompson's pleadings on this claim consist of the lengthy procedural history of the case, the demographics of Fayette County, and a synopsis of articles published concerning the case. Thompson does quote the voir dire examination of prospective juror A.B.[3] and that quote does reflect that A.B. had heard about the case. However, A.B. did not serve on Thompson's jury. (Trial R. 1863.) Thompson also pleaded that two jurors, M.S. and L.E., served on Thompson's jury and that they had heard about the case. However, the record shows that juror L.E. was an alternate juror and that he was excused before the case was submitted to the jury. (Trial R. 3847.) On direct appeal, this Court addressed Thompson's claim regarding juror M.S. and noted that juror M.S. was struck for cause. Thompson, 153 So. 3d at 121. None of the jurors cited in Thompson's pleadings were members of the jury that ultimately rendered a verdict of guilt and recommended a sentence of death.

The trial record shows that in April 2004 Thompson moved for a change of venue. (Trial C. 100.) That motion was not

[3]Thompson did not provide the name of the jurors in his postconviction petition. He merely used initials. Therefore, we assume that we have the correct jurors.

opposed by the State. In August 2004, the circuit court granted the motion and issued an order directing that the trial be moved to Lauderdale County. Later, the circuit court rescinded its August 2004 order stating that Lauderdale County was not the closest county free from publicity and that the trial would be moved to Lamar County instead. (Trial C. 207-08.) Defense counsel objected to the court moving the trial to Lamar County "and argued that § 15-2-24, Ala. Code 1975, prohibited the court from changing venue a second time once venue had been changed." Thompson, 153 So. 3d at 103. The circuit court declined to change its ruling. Defense counsel then withdrew his motion for a change of venue and stated that Thompson was voluntarily and intelligently waiving his right to move for a change of venue. The circuit court then questioned Thompson on the record. Thompson indicated that he was waiving this right.

First, this claim was insufficiently pleaded. Thompson waived his right to move for a change of venue, and the circuit court questioned Thompson about his waiver of this right on the record. In his amended petition, Thompson did not cite to any facts showing that Thompson's waiver was

involuntary or coerced. Therefore, Thompson failed to plead the full facts in support of this claim, and it was correctly summarily dismissed. See Rule 32.7(d), Ala. R. Crim. P.

Second, Thompson pleaded the name of no juror who served on Thompson's jury who was biased against him based on pretrial publicity. As we have stated:

> "[Moody] pleaded no facts about the actual extent or nature of the media coverage that would indicate that it was biased or prejudicial or that it had saturated the community. In addition, he did not name a single juror who sat on his jury who had read or heard about the case. Contrary to Moody's apparent belief, 'the existence of widespread publicity does not require a change of venue.' McGahee v. State, 885 So. 2d 191, 211 (Ala. Crim. App. 2003). Because Moody failed to allege sufficient facts in his petition that would indicate that he would have been entitled to a change of venue, he failed to plead sufficient facts to indicate that his appellate counsel was ineffective for not raising this claim on appeal. Therefore, summary dismissal of this claim of ineffective assistance of appellate counsel was proper."

Moody v. State, 95 So. 3d 827, 845 (Ala. Crim. App. 2012).

Furthermore, the Alabama Supreme Court in State v. Luong, 199 So. 3d 139 (Ala. 2014),[4] recognized the difficulty of establishing that a motion for a change of venue is warranted

[4]In Luong, the appellant was convicted and sentenced to death for killing his four children by throwing them off of a bridge.

based on a claim of prejudicial pretrial publicity. The Supreme Court stated:

> "'If, in this age of instant, mass communication, we were to automatically disqualify persons who have heard about an alleged crime from serving as a juror, the inevitable result would be that truly heinous or notorious acts will go unpunished. The law does not prohibit the informed citizen from participating in the affairs of justice. In prominent cases of national concern, we cannot allow widespread publicity concerning these matters to paralyze our system.'"

Luong v. State, 199 So. 3d 139, 150 (Ala. 2014), quoting Calley v. Callaway, 519 F.2d 184, 210 (5th Cir. 1975).

This Court has examined the articles cited in the petition and also the extensive voir dire of the prospective jurors conducted in Thompson's case. The publicity did not rise to the level involved in Luong, nor was the publicity as prejudicial as that involved in Luong. Based on the Supreme Court's holding in Luong, Thompson would not have been entitled, as a matter of law, to a change of venue.

> "Appellant also says that trial counsel was defective because they failed to request a change of venue due to the excessive pretrial publicity and because they did not conduct an adequate voir dire. As previously shown, the voir dire was adequate to uncover any bias or prejudice from prospective jurors. Furthermore, counsel made reasonable

> attempts to question jurors about their biases and whether they were affected by the pretrial publicity. Trial counsel's failure to request a change of venue is not tantamount to ineffective assistance of counsel. A change of venue is not automatically granted where there is extensive pretrial publicity. Instead, the decision to grant a change of venue rests largely within the discretion of the trial court. State v. Maurer (1984), 15 Ohio St.3d 239, 250, 15 OBR 379, 388-389, 473 N.E.2d 768, 780. Even if it would have been prudent to request a change of venue, we find that the empaneled jury was not prejudiced by the pretrial publicity. Thus, there was no prejudice stemming from defense counsel's failure to make this request."

State v. White, 82 Ohio St. 3d 16, 24-15, 693 N.E.2d 772, 780 (1998).

This claim was also correctly summarily dismissed based on Rule 32.7(d), Ala. R. Crim. P., because it failed to state a claim upon which relief could be granted. See Rule 32.7(d), Ala. R. Crim. P., thus, Thompson is due no relief.

IV.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel's performance was deficient because, he says, counsel failed to conduct an adequate voir dire examination of the prospective jurors.

In his amended petition, Thompson pleaded:

> "Trial counsel was ineffective for failing to ask venire members several important questions regarding potential bias. First, trial counsel failed to ask venire members whether they had attended or read about the memorial service held in honor of the victims in this case. As described more fully below, at this memorial service, attended by up to 1,000 persons in a local Fayette church, District Attorney ... appeared and offered a eulogy, remarks that were widely report in local and regional press. ...
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> "In addition, in voir dire, trial counsel failed to ask whether any of the jurors had viewed the program on CBS-TV's 60 Minutes program, aired only a few months prior, in early March 2005, about video game violence, in which episode the facts of Mr. Thompson's case had been described and portrayed in graphic detail. ...
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> "Finally, trial counsel was ineffective in failing to ask whether any jury members attended the same church as Kenneth Moore, Devin's father, and were present or had heard, generally in the community (or, as it was reported in newspapers) about Mr. Moore taking Devin Thompson to church to try to have the devil leave him as he claimed, in front of his congregation that his son was possessed by the devil."

(C. 150-52.) The State responded:

> "Thompson has failed to allege facts that, if true, would establish prejudice under Strickland [v. Washington, 466 U.S. 668 (1984)]. While Thompson argues that his trial counsel were ineffective for failing to ask certain questions of the jury during voir dire, he does not allege, nor does he point to any evidence, that any potential jurors actually read the newspaper articles that he cites, that they saw the episode of 60 Minutes that he references, that they attended the memorial service for the

> victims, or that they were aware of Moore's attempts to take the devil out of Thompson in church. Thompson fails to allege facts that, if true, would show that if those questions were asked, that any jurors would have responded. He also does not plead facts concerning what the unidentified jurors' responses would have been. Further, he fails to allege any facts showing that any of the jurors who actually served on his jury were biased or unfair or were incapable of making an impartial decision. Simply put, this claim consists of nothing but pure speculation."

(C. 433-34.) Thompson pleaded the name of no juror who had attended the memorial service or who had watched the 60 Minutes episode. Thompson failed to plead any prejudice in regard to this claim; therefore, it was correctly summarily dismissed. See Rule 32.6(b), Ala. R. Crim. P.

Moreover, this Court has often stated that trial counsel's actions during voir dire are matters of trial strategy.

> "'The Fifth Circuit Court of Appeals considers an attorney's actions during voir dire to be a matter of trial strategy, which 'cannot be the basis for a claim of ineffective assistance of counsel unless counsel's tactics are shown to be 'so ill chosen that it permeates that entire trial with obvious unfairness.'" Teague v. Scott, 60 F.3d 1167, 1172 (5th Cir. 1995) (quoting Garland v. Maggio, 717 F.2d 199, 206 (5th Cir. 1983)). Federal courts have held that an attorney's failure to exercise peremptory challenges does not give rise to

> a claim of ineffective assistance of counsel absent a showing that the defendant was prejudiced by the counsel's failure to exercise the challenges. United States v. Taylor, 832 F.2d 1187 (10th Cir. 1987). See also Mattheson v. King, 751 F.2d 1432, 1438 (5th Cir. 1985).'"

Lee v. State, 44 So. 3d 1145, 1164-65 (Ala. Crim. App. 2009), quoting Le v. state, 913 So. 2d 913, 954 (Miss. 2005).

The trial record shows that counsel filed motions concerning the venire. Trial counsel moved that he be informed of any past and present relationships between the district attorney's office and any prospective jurors, that the court disqualify any jurors who would automatically vote for the death penalty, and that the court "control prejudicial publicity." (Trial R. 138; 142; and 152.) The jurors also completed juror questionnaires. On direct appeal, appellate counsel argued that the circuit court erred during the jury-selection process. This Court held that the circuit court went out of its way to ensure that the jurors were unbiased. See Thompson, 153 So. 3d at 103-107.

The voir dire of the prospective jurors was extensive and lasted for four days. (R. 258-1863.) One-hundred and seventy-one prospective jurors were called as jurors in

Thompson's case. Given the extensive pretrial publicity the jurors were questioned in groups of 10 and questioned individually about their ability to be impartial in the case. Numerous questions were asked about the jurors' knowledge of the case based on the pretrial publicity. The prosecutor also asked the jurors if they knew Thompson's father. The trial court, the prosecutor, and defense counsel were all given opportunities to question the jurors. Defense counsel's questioning consisted of approximately 200 pages of the record on appeal. The entire questioning comprised more than 1600 pages of the record. It is clear that all parties went to great lengths to ensure that Thompson's jurors were impartial. Therefore, the underlying claim supporting this assertion of ineffective assistance of counsel has no merit. An attorney cannot be ineffective for failing to raise a meritless issue. Accordingly, this claim was correctly summarily dismissed based on Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

V.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel was

ineffective for failing to conduct an adequate investigation and to hire experts to support his video-game defense. Specifically, Thompson pleaded that his trial counsel should have called experts like -- Dr. John Murray, a professor at Kansas State University, and Professor Brad Bushman, a professor of psychology and professor of communications at the University of Michigan.

In response to this claim, the State pleaded:

> "[Thompson] has failed to plead facts that, if true, would show a reasonable probability that experts more well-versed in the video games and violence theories would have been permitted to testify by the trial court. As discussed above, the dubious video game violence theory was properly excluded by the trial court and has not been backed up by credible research or accepted by courts or the scientific community. There is no reasonable probability that experts more well-versed in the questionable video game violence research would have been able to demonstrate to the trial court that the link between violent video games and behavior during a dissociative state caused by PTSD was sufficiently established that it had gained general acceptance in the scientific community. Thus, his allegations must be summarily dismissed as deficiently leaded under Rule 32.6(b) and as meritless under Rule 32.7(d)."

(C. 459-60.)

On direct appeal, Thompson argued that the circuit court erred by preventing him from presenting his defense by not

allowing his experts to testify that Thompson's frequent playing of the violent video game Grand Theft Auto rendered him in a dissociate state at the time of the murders, thus he reverted to programed behavior. This Court held:

> "Other courts have noted the lack of scientific evidence connecting the frequent playing of violent video games to violent behavior. See Entertainment Software Ass'n v. Granholm, 426 F. Supp. 2d 646, 653 (E. D. Mich. 2006) ('[S]tudies have not provided any evidence that the relationship between violent video games and aggressive behavior exists. His tests fail to prove that "video games have ever caused anyone to commit a violent act, as opposed to feeling aggressive, or have caused the average level of violence to increase anywhere."'); Entertainment Software Ass'n v. Blagojevich, 404 F. Supp. 2d 1051, 1063 (N. D. Ill. 2005) ('Even if one were to accept the proposition that playing violent video games increases aggressive thoughts or behavior, there is no evidence that this effect is at all significant.').
>
> "Here, the circuit court allowed Thompson's two experts to testify that Thompson had PTSD and that he was in a dissociative state at the time of the murders. What the court did not allow was testimony that Thompson 'unconsciously reverted to the scripted behavior he learned through years of almost daily prolonged and repetitive videotape playing.' (Thompson's brief, p. 9.) This testimony is not consistent with the testimony that Alabama has held is nonscientific evidence, testimony concerning physical comparisons, that was subject to admissibility under the more lenient Rule 702, Ala. R. Evid., test, but is scientific-theory evidence subject to admissibility under the Frye test. Indeed, studies that have been conducted on the impact of the frequent playing of violent video

> games have not gained general acceptance in the scientific community. See, e.g., Brown v. Entm't Merchs., supra. The circuit court did not err in evaluating this evidence under the Frye [v. United States, 293 F.1013 (D.C. Cir. 1923),] standard and disallowing this testimony because it failed to satisfy that test. Accordingly, we find no reversible error in the circuit court's ruling excluding the above evidence."

Thompson, 153 So. 3d at 141-42.

Specifically, this Court held that the frequent playing of violent video games and their impact on one's conduct was not a viable defense because that defense had "not gained general acceptance in the scientific community." See Thompson, 153 So. 3d at 142. Trial counsel could not have been ineffective in failing to obtain experts and to present testimony on a defense that was not admissible at trial. "Counsel is not ineffective for failing to present evidence that is inadmissible." See McLaughlin v. State, 378 S.W.3d 328, 346 (Mo. 2012). Accordingly, this claim was correctly summarily dismissed because the underlying issue supporting the claim of ineffective assistance of counsel had no merit. See Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

VI.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel was ineffective for failing to hire a pediatric psychologist. Specifically, Thompson pleaded that counsel should have hired and presented the testimony of pediatric psychologist, Dr. Resmiye Oral, director of the Child Protection Program and a clinical Professor of Pediatrics at the University of Iowa.

In his amended petition, Thompson pleaded that Dr. Oral could have testified that Thompson had been exposed to violence at an early age, that Thompson suffered from post-traumatic stress disorder ("PTSD") because of the extensive emotional and physical abuse he suffered and that Dr. Oral could have countered the testimony offered by the State's experts that Thompson was not in a dissociative state at the time of the murders. Thompson pleaded:

> "Dr. [Resmiye] Oral, who has now met with and interviewed Mr. Thompson, for more than three hours and reviewed relevant records, if called as witness at trial, would have testified to the jury that Devin Thompson was a neglected child both emotionally and physically during the first five years of life. She would have noted that he was also a drug-endangered child in the care of his mother during the same time period. Dr. Oral would have explained how Devin Thompson experienced a totally different set of abuse and neglect circumstances in the two separate parental

> households, each of them involving both emotional and physical abuse and emotional and physical neglect. ... Dr. Oral would have testified that some chronic, severe, and multiple forms of child abuse and neglect starting very early may generate more severe PTSD (the dissociative type) than the PTSD that war veterans experience."

(R. 154.) The State, in its response, asserted:

> "Thompson identifies Dr. Resmiye Oral as an expert in pediatrics and childhood trauma and alleges what the content of her testimony would have been had she been called to testify during his trial. However, Thompson does not allege that she would have been available to testify in 2005 or that his trial counsel reasonably should have been aware of her existence. The State is not aware of, and the petition does not allege, any case in which Dr. Oral has ever testified in Alabama. Likewise, the State is not aware of, and the petition does not allege, that she had testified in any court prior to Thompson's trial in 2005. Thus, Thompson has not pleaded sufficient facts to support the necessary contention that Dr. Oral would have been available to testify in Thompson's case in 2005 or that his trial counsel were ineffective for failing to seek her out."

(C. 439-40.) Thompson failed to plead that Dr. Oral was available and that she could have testified as an expert witness in Alabama in 2005. Thus, Thompson failed to plead the "full facts" in regard to this claim. See Rule 32.6(b), Ala. R. Crim. P.

Moreover, the record of Thompson's trial shows that in February 2004 Thompson's counsel filed a motion entitled "Ex

parte Motion to Provide Funds for Expert Psychiatric and Psychological Assistance" and requested the sum of $3,500 to retain the services of Dr. Marianne Rosenzweig, a clinical psychologist. (C. 43-48.) The motion stated, in part:

> "The services of Dr. [Marianne] Rosenzweig are required to assist counsel in discerning, documenting, interpreting, and presenting mitigating circumstances which might militate in favor of at sentence less than death. Those mitigating facts include, but are not limited to: the impact on Devin Darnell Thompson of alcohol and drug abuse in the years leading up to the offense alleged; the history of substance abuse in his family making Devin Darnell Thompson's own addiction largely predestined; the fact that Devin Darnell Thompson has, throughout his life, functioned with very limited intellectual ability; and other facts relating to his traumatic upbringing and mental impairments."

(C. 43.) That motion was granted. (C. 96.) Counsel also filed a second motion entitled "Ex parte Motion to Provide Funds for Expert Psychiatric and Psychological Assistance" and requested the sum of $3,500 so that counsel could retain the services of Dr. Charles Nevels, a clinical psychiatrist "with experience in forensic psychology." (C. 49.) This motion was also granted. (C. 94.) Trial counsel also moved for an outpatient evaluation of Thompson's competency to stand trial and his mental state at the time of the offense. (C. 117-18.)

This motion was likewise granted. (C. 119.) Counsel then moved for additional funds for his psychiatric and psychologist experts. (C. 129.) This motion was granted. (C. 173.) Thompson was evaluated at Taylor Hardin Secure Medical Facility.

Dr. Rosenzweig testified extensively about the abuse Thompson suffered, about PTSD, about how someone develops PTSD, and about how PTSD affects those individuals diagnosed with that disorder. It was her opinion that Thompson suffers from PTSD. (R. 3315.) Dr. Rosenzweig testified extensively about Thompson's upbringing and the dramatic circumstances of his youth.

> "In my opinion at the time that this happened, when he shot the officers, that he was in a dissociated state. And from all of the statements that I -- of the officers who were present in Mississippi where he was detained who have testified about his behavior, it's my opinion that he did not come out of -- he was sort of in and out -- he was primarily in a dissociated state, even through the time that he was brought back over into Alabama."

(R. 3328-29.)

"Counsel is not ineffective for failing to shop around for additional experts." Smulls v. State, 71 S.W.3d 138, 156 (Mo. 2002). "'A postconviction petition does not show

ineffective assistance merely because it presents a new expert opinion that is different from the theory used at trial.'" Waldrop v. State, 987 So. 2d 1186, 1193 (Ala. Crim. App. 2007), quoting State v. Combs, 100 Ohio App. 3d 90, 103, 652 N.E.2d 205, 213 (1994).

> "To the extent Yeomans is alleging ineffective assistance of counsel for failing to hire an additional mental-health or intelligence expert to assist during the guilt phase, we agree with the circuit court's conclusion that this claim is insufficiently pleaded and is refuted by the record. The record from Yeomans's direct appeal indicates that two forensic psychologists evaluated his mental condition and whether Yeomans was competent to stand trial. (Trial C. 20–22, 27–28, 91–93.) Yeomans has not alleged that any additional expert assistance would have called into question the determination, for purposes of the guilt phase of his trial, that Yeomans was not criminally insane or that he was competent to stand trial. Yeomans has not demonstrated that the circuit court erred in summarily dismissing this claim."

Yeomans v. State, 195 So. 3d 1018, 1029 (Ala. Crim. App. 2013).

Dr. Rosenzweig's testimony was, in large part, cumulative to the testimony that Thompson pleaded should have been presented by Dr. Oral. Therefore, counsel could not have been ineffective for failing to secure the presence of Dr. Oral and offer testimony that was, in fact, presented. Accordingly,

this claim was correctly summarily dismissed. See Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

VII.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his counsel was ineffective for failing to have State experts prepare written reports on their findings.

In his amended petition, Thompson merely pleaded:

> "Experts are generally required to submit written reports as part of their testimony during the guilt phase. Had written reports been submitted, it is likely that the damaging Frye [v. United States, 293 F.1013 (D.C. Cir. 1923),] hearing during the middle of trial and other issues might have been addressed earlier, as described below. The State brought this up during Dr. [Marianne] Rosenzweig's cross-examination, and while trial counsel objected, and it was sustained, the fact that a written report was not generated was in the record. The State also brought this up during Dr. [Charles] Nevel's cross-examination, and no objection was made."

(C. 160-61.) The State responded:

> "This claim is not sufficiently pleaded pursuant to Rules 32.6(b) and 32.7(d), Ala. R. Crim. P., because Thompson has not specifically pleaded the contents of the written report, fails to explain why both a written report and testimony would have been

> necessary, fails to allege facts that show how his trial counsels's performance was deficient, and cannot show a reasonable probability of prejudice."

(C. 453-54.)

Thompson did not allege what evidence should have been presented in the experts' written reports. Moreover, Thompson did not allege how he was prejudiced when the experts testified as to their findings at trial and were subjected to vigorous cross-examination. Therefore, this claim was correctly summarily dismissed based on Rule 32.6(b), Ala. R. Crim. P., and Thompson is due no relief on this claim.

VIII.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his counsel was ineffective for failing to conduct an adequate investigation to effectively challenge the Rule 404(b), Ala. R. Evid., evidence of other crimes that was admitted at Thompson's trial.

At trial, evidence was presented that at the time that Thompson was arrested he was asleep in a stolen vehicle in the parking lot of a business--a dry clearing establishment--and that the business had been burglarized and clothes had been

taken thast were found in the vehicle with Thompson.

In his amended petition, Thompson pleaded that counsel was ineffective for failing to challenge the introduction of those crimes. In response, the State pleaded:

> "This claim is not sufficiently pleaded pursuant to Rules 32.6(b) and 32.7(d), Ala. R. Crim. P., because Thompson cannot show that evidence that he was involved in a burglary at a dry cleaners in Jasper should not have been admitted to show his motive or intent, does not plead what his trial counsel should have investigated or offered as evidence to support his innocence, fails to explain how evidence of the prior bad acts undermined his presumption of innocence, and does not describe how the evidence admitted to show motive or intent could have prejudiced him."

(C. 471.)

On direct appeal, this Court specifically found that Thompson's prior bad acts were properly admitted for the purpose of showing Thompson's motive and intent. See Thompson, 153 So. 3d at 134-37. Therefore, the underlying issue was addressed on direct appeal and found to have no merit. Accordingly, counsel cannot be ineffective for failing to raise a meritless issue, and this claim was correctly summarily dismissed. See Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

IX.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel was ineffective for failing to request certain jury instructions. Specifically, he argues that his counsel should have requested instructions on the specific intent necessary to convict him of capital murder because the court did not define the term "real and specific." He also argues that trial counsel should have requested a lesser-included-offense instruction on manslaughter.

The circuit court's instructions on specific intent were identical to those in the Alabama Pattern Jury Instructions on this issue. This Court upheld a virtually identical instruction on intent. See Luong v. State, 199 So. 3d 173, 204-05 (Ala. Crim. App. 2015). Also, on direct appeal Thompson argued that the circuit court erred in failing to give a jury instruction on felony murder. This Court stated:

> "Where the evidence will support a charge on the offense of capital murder, a charge on the lesser-included offense of felony murder is warranted only if a reasonable theory of the evidence indicates that the murder may not have been intentional. See, e.g., Peoples v. State, 951 So. 2d 755, 758 (Ala. Crim. App. 2006) ('"'[F]elony murder does not require intent to kill; the only intent necessary is the intent to commit the underlying felony.'"' (citations omitted)); Calhoun

> v. State, 932 So. 2d 923, 969 (Ala. Crim. App. 2005). In the present case, there was no reasonable theory of the evidence that indicated that the murders were not intentional. Nor was there any evidence that the taking of the gun and the killings were not committed pursuant to one course of conduct.
>
> "There was no rational basis to support a conviction on any lesser-included offense. Thus, the circuit court did not commit plain error in failing to sua sponte instruct the jury on murder, robbery, and felony murder."

Thompson, 153 So. 3d at 156, (emphasis added).

"'[B]ecause the underlying claims have no merit, the fact that [defense counsel's] lawyer did not raise those claims cannot have resulted in any prejudice to [the appellant].'" Jackson v. State, 133 So. 3d 420, 453 (Ala. Crim. App. 2009), quoting Magwood v. State, 689 So. 2d 959, 974 (Ala. Crim. App. 1996). Accordingly, this claim was correctly summarily dismissed. See Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

X.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his trial counsel was ineffective for failing to object to certain evidence and for failing to cross-examine certain witnesses effectively.

"'[E]ffectiveness of counsel does not lend itself to measurement by picking through the transcript and counting the places where objections might be made. Effectiveness of counsel is not measured by whether counsel objected to every question and moved to strike every answer.'" Bush v. State, 92 So. 3d 121, 161 (Ala. Crim. App. 2009), quoting Brooks v. State, 456 So. 2d 1142, 1145 (Ala. Crim. App. 1984). Whether to object is typically a matter of trial strategy. See Moore v. State, 659 So. 2d 205, 209 (Ala. Crim. App. 1994).

A.

Thompson first argues that counsel was ineffective for failing to object to prejudicial photographs. In his amended petition, Thompson pleaded:

> "A large number of incredibly prejudicial photographs were introduced in this case; trial counsel objected to almost none of them, and in fact conceded to admitting a large bulk of them at once. In fact, Exhibits 50, 59, 60, 61, 62, 63, 64, 65, 66, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, and 85 were all admitted at once with no objection by trial counsel. Many of these photographs were clearly cumulative, and incredibly prejudicial. The appellate court noted that trial counsel had only objected to one of these photographs. ... [Alabama Bureau of Investigation] Division criminal investigator Walter Darren Blake testified to these photographs, and offered additional evidence as to entrance and exit wounds. While trial counsel objected to this testimony, he

> limited his objection to this witness testifying as a pathologist, despite the Court's reference to the fact that he was not sure if this witness could testify to entrance and exit wounds. This witness then continued to discuss a variety of entrance and exit wounds, which the appellate court noted would be one of the material points to demonstrate with additional photographs. ... However, during direct examination when Mr. Blake was called later by the State again, he admitted that he does not have the ability to recognize the difference between entrance and exit wounds. Trial counsel should have immediately moved for this testimony on those entrance and exit wounds to be stricken and for the photographs admitted to prove such pathologies to be stricken as well. Trial counsel's failure to do so was ineffective and prejudicial to Thompson, both for the guilt and the penalty phase as well as appeal."

(C. 220-21.) The State responded:

> "Thompson does not describe the photographs with any specificity, other than stating that they 'were clearly cumulative, and incredibly prejudicial.' Thompson also failed to plead facts showing a reasonable probability of a different outcome had his trial counsel objected to the photographs. Thus, that claim is not sufficiently pleaded."

(C. 509.) As the State correctly pleaded, Thompson did not specifically identify the photographs that he pleaded counsel should have objected to or what objection counsel should have made. See Mashburn, 148 So. 3d at 1128 ("Although Mashburn alleged that counsel should have objected to the crime-scene and autopsy photographs, he failed to plead in his petition

what objection he believed counsel should have made that would have resulted in the photographs being excluded.").

Moreover, at least one court has noted the rarity of finding a counsel's performance ineffective for failing to object to photographs:

> "A competent lawyer familiar with the most recent pronouncements of this Court on the subject and familiar with the trial record would not perceive that admission of the photographs was an obvious basis for reversal of the appeal. No case is cited or found where trial counsel was held ineffective for failing to object to such photographs or holding that appellate counsel was ineffective for not asserting error in the admission of such photographs."

Hall v. State, 16 S.W.3d 582, 587 (Mo. 2000).

The underlying claim supporting the claim of ineffective assistance of counsel had no merit; therefore, the postconviction court correctly summarily dismissed this claim. Thompson is due no relief on this claim. See Rule 32.7(d), Ala. R. Crim. P.

B.

Thompson next argues that his trial counsel was ineffective for failing to cross-examine Agent Johnny Tubbs, an agent with the Alabama Bureau of Investigation, effectively concerning the circumstances surrounding Thompson's statement

to law enforcement. Thompson pleaded:

> "ABI Agent [Johnny] Tubbs testified to the alleged confession by Mr. Thompson during their 2½ [hour] interview after the incident. Trial counsel objected to the admission of this statement again, as he had prior to the trial. Mr. Tubbs then further testified to statements that Mr. Thompson did not want in his statement. Mr. Tubbs testified that afer Tommy Camp came in to witness Mr. Thompson's waiver of his Miranda rights, he asked Thompson whether he wanted Mr. Camp to stay outside of the room, and indicated that Mr. Thompson said yes. Trial counsel did not effectively cross-examine Agent Tubbs on this statement despite the previous testimony, during the suppression hearing by Officer Tommy Camp that it was Agent Tubbs who told him that he could leave the room. Agent Tubbs also testified to the statement that implied the reason that Mr. Thompson did not hurt the firefighters was that they did not pose a threat to him of going to jail. Trial counsel did not effectively cross-examine Agent Tubbs on this point, when the firefighters had testified earlier that Mr. Thompson did not have a gun in his hand when they saw him. Trial counsel also did not question Agent Tubbs about the additional drafts of this statement that he made prior to getting this statement finalized, which upon reasonable investigation, he would have discovered. It would further lend credence to the defense's theory that this statement was carefully crafted to look as bad as possible for Mr. Thompson. These failures at investigation and cross-examination of the State's key witness who testified as to Mr. Thompson's confession were prejudicial to his case."

(C. 221-22.)

Thompson failed to plead what his trial counsel could have asked Agent Tubbs that would have been considered

effective cross-examination. Therefore, Thompson failed to plead the "full facts" in support of this claim; thus, this claim was correctly summarily dismissed. See Rule 32.6(b), Ala. R. Crim. P.

Moreover,

> "'decisions regarding whether and how to conduct cross-examinations and what evidence to introduce are matters of trial strategy and tactics.' Rose v. State, 258 Ga. App. 232, 236, 573 S.E.2d 465, 469 (2002). '"'[D]ecisions whether to engage in cross-examination, and if so to what extent and in what manner, are ... strategic in nature.'"' Hunt v. State, 940 So. 2d 1041, 1065 (Ala. Crim. App. 2005), quoting Rosario-Dominguez v. United States, 353 F. Supp. 2d 500, 515 (S.D.N.Y. 2005), quoting in turn, United States v. Nersesian, 824 F.2d 1294, 1321 (2d Cir. 1987). 'The decision whether to cross-examine a witness is [a] matter of trial strategy.' People v. Leeper, 317 Ill. App. 3d 475, 483, 740 N.E.2d 32, 39, 251 Ill. Dec. 202, 209 (2000)."

A.G. v. State, 989 So. 2d 1167, 1173 (Ala. Crim. App. 2007).

The trial record shows that counsel thoroughly cross-examined Agent Tubbs surrounding the circumstances of Thompson's statement. (Trial R. 2436-55; 2460-61.) In fact, the entire cross-examination concerned questions surrounding Thompson's confession and Agent Tubbs's handwritten recording of that confession. Counsel was not ineffective in his cross-examination of Agent Tubbs. Thus, this claim was also

correctly summarily dismissed based on Rule 32.7(d), Ala. R. Crim. P., and Thompson is due no relief.

C.

Thompson argued that counsel was ineffective for not effectively cross-examining Dr. Brent Willis, a rebuttal witness called by the State to refute the testimony of Thompson's experts. Dr. Willis conducted a mental evaluation of Thompson and testified as to certain incriminating statements Thompson had made during the evaluations.[5]

Thompson pleaded:

> "Trial counsel's failure to speak to Dr. [Brent] Willis prior to his testimony (and therefore to know that he would attempt to testify as to confidential statement made to him by Mr. Thompson) fell below the standards of prevailing professional norms. The State relied on Dr. Willis to entirely undermine defense counsel's theory of the case, namely, that Mr. Thompson was in a dissociative state and he was not aware of what he was doing during the death of these victims."

(C. 222-23.) Thompson failed to plead what counsel should have uncovered and what Dr. Willis should have testified to if

[5]Thompson told Dr. Willis that he had done a lot of "stupid stuff. He broke into a lot of places." (Trial R. 3491.) He also told Dr. Willis that he "broke into a place and got clothes and stole a [Toyota] Camry [automobile] and went home." (Trial R. 3491.)

asked by trial counsel.

Moreover, on direct appeal, this Court stated:

> "Thompson's detailed confession was admitted into evidence. Thompson's confession was significantly more incriminating than were the statements he made to Dr. Willis. Accordingly, the admission of statements made by Thompson to Dr. Willis during his mental evaluation was harmless beyond a reasonable doubt."

153 So. 3d at 147.

Therefore, any failure by counsel to effectively cross-examine Dr. Willis about any statements Thompson made to him would have resulted in no prejudice to Thompson. Thus, Thompson could not have satisfied the Strickland standard in regard to this claim and this claim was properly summarily dismissed based on Rule 32.7(d), Ala. R. Crim. P.

D.

Thompson next argues that counsel was ineffective for failing to object to statements made by the prosecutor in closing arguments. Specifically, he argues that counsel failed to object to arguments that the prosecutor made referencing the Bible, failed to object to arguments that the murders were Fayette County's "9/11" (a reference to the terrorist attacks in New York City, September 11, 2001), and

failed to object to arguments that, he says, were not supported by the record.

In this Court's opinion on direct appeal, we addressed the merits of the underlying claims of ineffective assistance of counsel and found no error in any of the arguments made by the prosecutor. See Thompson, 153 So. 3d at 158-76. Because the underlying claims have no merit, counsel could not be ineffective for failing to raise an argument that has no merit. See Rule 32(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

XI.

Thompson next argues that the postconviction court erred in determining that the cumulative effect of the claims of ineffective assistance of counsel did not entitle him to postconviction relief.

In Taylor v. State, 157 So. 3d 131 (Ala. Crim. App. 2010), we addressed a similar claim and stated:

> "Taylor ... contends that the allegations offered in support of a claim of ineffective assistance of counsel must be considered cumulatively, and he cites Williams v. Taylor, 529 U.S. 362 (2000). However, this Court has noted: 'Other states and federal courts are not in agreement as to whether the "cumulative effect" analysis applies to Strickland claims'; this Court

> has also stated: 'We can find no case where Alabama appellate courts have applied the cumulative-effect analysis to claims of ineffective assistance of counsel.' Brooks v. State, 929 So. 2d 491, 514 (Ala. Crim. App. 2005), quoted in Scott v. State, [Ms. CR-06-2233, March 26, 2010] ___ So. 3d ___, ___ (Ala. Crim. App. 2010); see also McNabb v. State, 991 So. 2d 313, 332 (Ala. Crim. App. 2007); and Hunt v. State, 940 So. 2d 1041, 1071 (Ala. Crim. App. 2005)."

157 So. 3d at 140.

"If we were to evaluate the cumulative effect of the instances of alleged ineffective assistance of counsel, we would find that [the appellant's] substantial rights had not been injuriously affected, because we have found no error in the instances argued in the petition." McNabb v. State, 991 So. 2d 313, 332 (Ala. Crim. App. 2007). The same is true in this case. The circuit court did not err in summarily dismissing this claim for the reasons stated in McNabb. Thompson is due no relief.

XII.

Thompson next argues that the postconviction court erred in summarily dismissing his claim that his counsel's performance at the penalty phase was ineffective. Specifically, he pleaded that counsel should have called as witnesses a pediatrician who specialized in child abuse, an

expert to testify concerning the effects of playing violent video games, and a neuropsychologist. He pleaded that counsel should also have called as witnesses his parents, Gloria Thompson and Kenny Moore, his girlfriend, Sabrena Smith, and one of this high-school teachers, Sharon Yelverton.

Thompson pleaded

> "Obtaining a pediatrician with a specificity in child abuse pediatrics would have made a significant difference to Thompson's case. It would have provided to this defense the appropriate focus on Mr. Thompson's age, a crucial mitigating factor, and the specific effects of abuse in children and the result dissociative PTSD from which he clearly suffered. Using Dr. Oral, or someone comparably-credentialed, as part of the penalty phase would have further demonstrated in her testimony, was not an excuse regarding what happened, but rather, an explanation for his conduct, and a foundational rationale for which Mr. Thompson's life should be spared, why persons dealt such a traumatic hand, from the very start of his life, up until the June 7, 2003, tragedy, should not be executed."

(R. 227-28.) Thompson further pleaded that counsel should have presented an expert to testify concerning the adverse effects of playing violent video games. A neuropsychologist, Thompson pleaded, could have testified concerning the results of brain imaging done on Thompson; however, he failed to plead what result the brain tests would have revealed. In a footnote, Thompson noted that he would be moving for funds to

hire such an expert to conduct tests on Thompson. (R. 229 n. 11.)

In regard to the lay witnesses, Thompson pleaded that his mother could have testified, in part, that Thompson feared his father, that Thompson moved in with her in high school because of that fear, and that she loved her son. His father, Thompson pleaded, could have testified, in part, as a hostile witness that

> "Moore had been committed involuntarily in response to reported psychotic behavior involving suicidal thoughts and attacking officers, that soon after his release from the mental hospital his son's custody had been transferred to his home, that he believed in working his children very hard, that he believed in a father's right to use a 'switch' and corporal punishment on his children...."

(C. 234-35.) Thompson's girlfriend, he pleaded, could have testified to Thompson's good qualities.

> "When claims of ineffective assistance of counsel involve the penalty phase of a capital murder trial the focus is on '"whether 'the sentencer ... would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.'"' Jones v. State, 753 So. 2d 1174, 1197 (Ala. Crim. App. 1999), quoting Stevens v. Zant, 968 F.2d 1076, 1081 (11th Cir. 1992). See also Williams v. State, 783 So. 2d 108 (Ala. Crim. App. 2000). An attorney's performance is not per se ineffective for failing to present mitigating evidence at the penalty phase of a capital trial. See State v. Rizzo, 266 Conn. 171, 833 A.2d 363 (2003); Howard v.

> State, 853 So. 2d 781 (Miss. 2003), cert. denied, 540 U.S. 1197 (2004); Battenfield v. State, 953 P.2d 1123 (Okla. Crim. App. 1998); Conner v. Anderson, 259 F. Supp. 2d 741 (S. D. Ind. 2003); Smith v. Cockrell, 311 F.3d 661 (5th Cir. 2002); Duckett v. Mullin, 306 F.3d 982 (10th Cir. 2002), cert. denied, 123 S.Ct. 1911 (2003); Hayes v. Woodford, 301 F.3d 1054 (9th Cir. 2002); and Hunt v. Lee, 291 F.3d 284 (4th Cir.), cert. denied, 537 U.S. 1045 (2002)."

Adkins v. State, 930 So. 2d 524, 536 (Ala. Crim. App. 2001) (opinion on return to third remand).

> "'Prejudicial ineffective assistance of counsel under Strickland cannot be established on the general claim that additional witnesses should have been called in mitigation. See Briley v. Bass, 750 F.2d 1238, 1248 (4th Cir. 1984); see also Bassette v. Thompson, 915 F.2d 932, 941 (4th Cir. 1990). Rather, the deciding factor is whether additional witnesses would have made any difference in the mitigation phase of the trial.' Smith v. Anderson, 104 F. Supp. 2d 773, 809 (S. D. Ohio 2000), aff'd, 348 F.3d 177 (6th Cir. 2003). 'There has never been a case where additional witnesses could not have been called.' State v. Tarver, 629 So. 2d 14, 21 (Ala. Crim. App. 1993)."

McWilliams v. State, 897 So. 2d 437, 453-54 (Ala. Crim. App. 2004), rev'd on other grounds, Ex parte Jenkins, 972 So. 2d 159 (Ala. 2005).

> "'"[T]he failure to present additional mitigating evidence that is merely cumulative of that already presented does not rise to the level of a constitutional violation." Nields v. Bradshaw, 482 F.3d 442, 454 (6th Cir. 2007) (quoting Broom v. Mitchell, 441 F.3d 392, 410 (6th Cir. 2006))." Eley v. Bagley, 604 F.3d 958, 968 (6th Cir. 2010). 'This

> Court has previously refused to allow the omission of cumulative testimony to amount to ineffective assistance of counsel.' United States v. Harris, 408 F.3d 186, 191 (5th Cir. 2005)."

Daniel v. State, 86 So. 3d 405, 429-30 (Ala. Crim. App. 2011).

First, we agree that Thompson failed, in part, to meet his burden of pleading in regard to this claim. Counsel did not plead the contents of the expert's evidence that he maintains should have been presented. "The circuit court correctly found this claim was insufficiently pleaded because [the appellant] failed to plead the identity or the content of those experts' testimony." Washington v. State, 95 So. 3d 2, 64 (Ala. Crim. App. 2012). Thompson failed to specifically plead what testimony a pediatrician who specialized in child abuse or a neurologist could have presented at the penalty phase. Regarding the lay witnesses, Thompson ignores the fact that the vast majority of evidence counsel pleaded should have presented, in fact, was presented at Thompson's sentencing through the testimony of other witnesses.

> "To sufficiently plead a claim that counsel were ineffective for not presenting evidence or not calling witnesses, a Rule 32 petitioner is required to identify the names of the witnesses, to plead with specificity what admissible testimony those witnesses would have provided had they been called to testify, and to allege facts indicating that had

> the witnesses testified there is a reasonable probability that the outcome of the proceedings would have been different."

Mashburn, 148 So. 3d at 1154.

Moreover, this is not a case where counsel presented no evidence in mitigation. The record of Thompson's trial shows that counsel called family members, friends, and a clinical psychologist as witnesses at the penalty phase. The following extensive testimony was presented at the penalty phase:

Jerry Reed testified that he had a relationship with Thompson's mother, Gloria Thompson, and that they have two children together. He said that he met Thompson when he was about six or seven years old and that Thompson was living with his father in Fayette, Alabama, at that time. He testified that Gloria was a "heavy drinker" and "abused substances," that he moved to have her parental rights terminated in regard to the two children they had together. He knew Thompson's father, Kenny Moore, and knew that Moore also used drugs. Reed testified that when Thompson was in high school he was having "problems with his father and wanted to come to Jasper and live" with his mother because he was afraid of his father. Gloria was still using alcohol and drugs at that time, he

said. Reed testified that he spoke to Moore about Thompson and that Moore told him that Thompson was "demon-possessed:"

> "You know, he said he done everything he could. He had done beat him and he had done took him, you know, to the church and had people to pray for him, you know. And wasn't nothing he could do with him, you know. You know, he was just possessed."

(Trial R. 3938.) Last, Reed testified that the entire time Thompson lived in Jasper he never had a problem with Thompson. Reed said:

> "He always respected me, you know. He was a hard worker, you know. And just whatever I asked him to do, you know, he would do it. And it wouldn't take him long to do it, you know. He knew how to work, you know, for a kid his age. And we had hired him on a couple of jobs, you know, to do work for us, you know."

(Trial R. 3941.)

Hester Whitiker, Thompson's paternal uncle, testified that he had known Thompson for Thompson's entire life, that he had seen Moore beat Thompson and hit him "upside the head," that Thompson would call him occasionally and tell him that he could not handle it any more, and that he encouraged Thompson to move in with his mother because Thompson was so afraid of his father. Whitiker said that he was concerned about how Moore treated all of his children, that Moore would not let

his children talk to outsiders about what happened in their house, that the kids would tell him of frequent beatings their father gave them, and that if Moore saw him talking to Thompson, Moore would beat Thompson. Whitiker testified that one of Moore's children came to him and told him that Moore was beating her, that she was scared of Moore, that this child went to the police, and that this child was eventually removed from Moore's house. He further testified that Moore made Thompson go to work when he was about nine years old, that Thompson would work at night stripping floors, and that he would have to go school the next morning. He testified:

> "[Thompson] would call, me sometimes and say, 'Uncle Hester, I can't handle it no more.' You know what I'm saying? And I told him, I said, 'Devin, you ain't got long, man. Just try to hold on.' You know what I'm saying? I said, 'as a matter of fact, talk to your mom and try to move up there with your mom."

(Trial R. 3954.)

Kelly Jeneane Moore, Thompson's older sister, testified that she is eight years older than Thompson. She said that Thompson's father would discipline them if they did not do what he said.

> "When we'd get in trouble, we would get fussed at, telling us that we knew what to do but we just

> wanted to be hardheaded, do what we wanted to do, but what my father says goes. And at times when the boys got in trouble, their penalty was they would do either work outside or push-ups or different things of that sort."

(Trial R. 3964.) She said that she had seen their father beat Thompson and that Thompson would have welts on him from being hit with a switch or a belt. Thompson's father frequently said that Thompson was crazy and that he was demon-possessed like his mother.

Roger Satcher, principal at Halleyville High School, testified that he had contact with Thompson when he was a teacher and a coach at Walker High School when Thompson was in the 10th, 11th, and 12th grades.

> "I considered him just a normal teenage boy, you know, that -- you know, he did have -- you know, he did have a little problem when he got scared. But I never had a problem dealing with him.
>
> "....
>
> "[W]hen he was upset and you started to talk to him, sometimes it was like he would stare right through you and he was not paying attention to what you were saying to where there was no response, but after he calms down, then he could talk with you about whatever it is you're talking about."

(Trial R. 3978-80.) He said that he never had any major problems with Thompson. Satcher said that he had occasion to

speak to Thompson's mother when Thompson was a senior, he said: "Basically, [she] told me that she didn't care, that she was washing her hands of him because she couldn't handle him and that we could do what we wanted to do." (Trial R. 3981.)

Brandon Smith testified that he lived with Thompson when his mother was dating Thompson's father when Thompson was about 15 years old. He testified that he witnessed Moore beat Thompson. "He would make [Thompson] take his clothes off and he would beat him -- I remember seeing him get beat with a PVC pipe -- or whatever that pipe is called." (Trial R. 3998.) Or, he said, he would beat Thompson with a weight-lifting belt. He said that for the year and a half he lived with Thompson, on the average, this happened about three or four times a week. (Trial R. 3999.) When he would beat Thompson, Smith said, Moore would curse Thompson and say that Thompson was crazy like a devil. Smith also testified that Moore made him, Thompson, and Smith's brother fight each other in a "cow pasture." (Trial R. 4004.)

Maxine Austin testified that she is a foster parent and that Thompson lived with her for a time when he was four years

old and that he later came to stay with her for a longer period when he was six. She said that she felt that Thompson was being abused and that she tried to prevent DHR from returning custody to Thompson's father. Austin said that, while he was living with her, she got a call from DHR that Thompson was on top of a school building saying that Moore was not his daddy and that he wanted to go live with his real parents. (Trial R. 4101.)

Dr. Marianne Rosenzweig, a clinical psychologist, testified that she spoke to 20 people from different phases of Thompson's life, and that she examined his school records, his jail records, and DHR records. DHR records show that a report was made to DHR from a family member of Thompson's mother when Thompson was two months old. The report alleged that Thompson was being neglected--that his mother would leave him with people and not come back to pick him up. There was a history of severe mental illness on Thompson's mother's side of the family. She testified extensively about incidents that occurred in Thompson's home, the numerous times he was removed from his father's home because of beatings, and an incident when he was 15 when he wrecked his father's Cadillac

automobile and his father beat him so badly that he begged his mother to let him live with her. (Trial R. 4055.) Counsel asked Dr. Rosenzweig what affect neglect and abuse have on a child. She testified:

> "[Dr. Rosenzweig]: [I]t usually has a very severe effect on a child that will carry over into adulthood and for the remainder of their lives. That there have actually been studies -- there have been a number of studies that talk about the behavioral changes that most people who have suffered that kind of abuse and neglect and chaos in their lives become quite dysfunctional when they become adults, that they will develop addictions, they develop -- they become mean people, they become rebellious, that they become abusive themselves.
>
> "And actually, there are studies, more recently on -- they can even look at the brains. We've got this sophisticated brain imaging techniques and they've been able to show that it actually causes physical changes in -- the abuse and all this -- causes physical changes in the brain of children, that structural changes ... to put it really simply, it affects the -- those area of the brain that we call the 'prefrontal cortex,' which is responsible for judgment and decision-making, that it kind of shuts down that area of the brain. It's not as -- basically, as well developed in someone who has gone through a lot of abuse as in someone who has not.
>
> "And that's basically, the area of the brain that separates us from animals. That is that the frontal cortex where -- that's really the essence of what makes us human beings.
>
> "[Defense counsel]: Were you able to see any of the effects of this very early childhood neglect and abuse in [Thompson's] life?

"[Dr. Rosenzweig}: In him, yes. And it, primarily -- you know, it's very unusual because I've worked with a lot of -- in my twenty -- well, actually, thirty-something years now -- of practicing, I've -- even with the university students I saw as therapy clients, you know, a number of them had suffered pretty severe abuse. And then, the kind of work I do now, I've talked with a lot of people who have undergone severe abuse.

"[Thompson] is most unusual in my experience. And I can't think of anyone else, truly, a single person, who has gone through the degree of abuse and neglect that he has that -- generally, what it does is, it makes people mean. And it even --

"[Defense counsel]: Aggressive?

"[Dr. Rosenzweig]: It makes them --

"[Defense counsel]: Hostile?

"[Dr. Rosenzweig]: Right. And that they tend to have a chip on their shoulder, they tend to be rebellious, that -- and he truly is not like that. And it didn't show up on the testing that I gave him.

"....

"[Defense counsel]: So, you haven't heard anything about Thompson being mean like a lot of the kids that you see that have suffered from abuse.

"[Dr. Rosenzweig]: Right. And, in fact, I heard to the contrary, that what I heard was that he was just always a likable boy, that he was pleasant company when his dad wasn't around, that he was kind of -- he was fun to be around, he'd kind of joke and try to -- but people -- some people who knew him well -- and the women, particularly, that he sought out were like mother figures, or other mother substitutes.

> ... Those ladies told me that, you know, they could see, it was a veneer -- kind of -- he'd kind of put on this kind of happy clown kind of behavior, but they could see it was -- you know, he was really -- you know, underneath it all, that he wasn't a happy person. But he was -- they knew that he was pleasant company.
>
> "And what -- and he never gave up on, even to this day -- giving up on trying to -- on relationships with other people. I think that's the most remarkable thing, to me, in thinking about all my other clients who have not even suffered the degree of abuse and neglect that he did. And -- but I look at the literature, and we would expect that somebody who's gone through what he has as being someone who would just give up on other people."

(Trial R. 4069-72.) She testified that it was her opinion that when Thompson committed the murders he was under the influence of extreme emotional or mental disturbance and was unable to appreciate the criminality of his conduct. (Trial R. 4079-80.) Dr. Rosenzweig said that in her interviews with Thompson he had shown remorse and was terrified that people died by his hands.

> "Considering all the evidence introduced during the guilt and penalty phases of the trial, we cannot see how the evidence that the appellant argues should have been elicited at the penalty phase would have had any impact on his sentence. It certainly would not have changed the outcome, and it did not render the sentencing fundamentally unfair or unreliable."

Pierce v. State, 851 So. 2d 558, 563 (Ala. Crim. App. 1999),

rev'd on other grounds, 851 So. 2d 606 (Ala. 2000). Also, "As a matter of trial strategy, counsel could well decide not to call family members as witnesses because family members can be easily impeached for bias." Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995).

The record of Thompson's penalty phase shows that counsel presented a great deal of mitigation. Accordingly, this claim was correctly summarily dismissed because it failed to present a claim upon which relief could be granted. See Rule 32.7(d), Ala. R. Crim. P. Thompson is due no relief on this claim.

XIII.

Thompson further argues that the postconviction court erred in denying his motion for discovery. Specifically, he argues that discovery was necessary to support his claim that the State violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose certain evidence at trial. Thompson pleaded that the State failed to disclose the drafts of Thompson's statements to police that were made by Agent Tubbs, failed to disclose evidence regarding burglaries in Jasper that were admitted as Rule 404(b), Ala. R. Evid., failed to disclose information related to one of the State's experts,

Dr. Willis, and failed to disclose evidence regarding the civil suit the victim's families had filed against Thompson.

The postconviction record shows that in December 2016, Thompson filed a motion for discovery of prosecution files necessary for his Rule 32 proceedings. (C. 569-85.) In support of the motion Thompson stated that the information was necessary for his Brady claim. The State filed a motion in opposition to Thompson's discovery motion. (C. 586.) It asserted that no discovery was warranted because all the claims raised in Thompson's amended petition were "procedurally barred, meritless, or insufficiently pleaded" and that therefore, he failed to establish good cause for any discovery. (C. 590.) The postconviction court denied the discovery motion. (C. 597.)

There is no absolute right to discovery in postconviction proceedings. The Alabama Supreme Court in Ex parte Land, 775 So. 2d 847 (Ala. 2000), set out the standard used when examining a motion for discovery in regard to a postconviction proceeding:

> "We agree with the Court of Criminal Appeals that 'good cause' is the appropriate standard by which to judge postconviction discovery motions. In fact, other courts have adopted a similar

'good-cause' or 'good-reason' standard for the postconviction discovery process. See [State v.] Marshall, [148 N.J. 89, 690 A.2d 1 (1997)]; State v. Lewis, 656 So. 2d 1248 (Fla. 1994); People ex rel. Daley v. Fitzgerald, 123 Ill.2d 175, 121 Ill. Dec. 937, 526 N.E.2d 131 (1988). As noted by the Illinois Supreme Court, the good-cause standard guards against potential abuse of the postconviction discovery process. See Fitzgerald, supra, 123 Ill.2d at 183, 121 Ill. Dec. 937, 526 N.E.2d at 135. We also agree that New Jersey's Marshall case provides a good working framework for reviewing discovery motions and orders in capital cases. In addition, we are bound by our own rule that 'an evidentiary hearing must be held on a [petition for postconviction relief] which is meritorious on its face, i.e., one which contains matters and allegations (such as ineffective assistance of counsel) which, if true, entitle the petitioner to relief.' Ex parte Boatwright, 471 So. 2d 1257, 1258 (Ala. 1985).

"We emphasize that this holding -- that postconviction discovery motions are to be judged by a good-cause standard -- does not automatically allow discovery under Rule 32, Ala. R. Crim. P., and that it does not expand the discovery procedures within Rule 32.4. Accord Lewis, supra, 656 So. 2d at 1250, wherein the Florida Supreme Court stated that the good-cause standard did not affect Florida's rules relating to postconviction procedure, which are similar to ours. By adopting this standard, we are only recognizing that a trial court, upon a petitioner's showing of good cause, may exercise its inherent authority to order discovery in a proceeding for postconviction relief. In addition, we caution that postconviction discovery does not provide a petitioner with a right to 'fish' through official files and that it 'is not a device for investigating possible claims, but a means of vindicating actual claims.' People v. Gonzalez, 51 Cal.3d 1179, 1260, 800 P.2d 1159, 1206, 275 Cal.

> Rptr. 729, 776 (1990), cert. denied, 502 U.S. 835, 112 S.Ct. 117, 116 L.Ed.2d 85 (1991). Instead, in order to obtain discovery, a petitioner must allege facts that, if proved, would entitle him to relief. Cf. Porter v. Wainwright, 805 F.2d 930, 933 (11th Cir. 1986) ('a hearing [on a habeas corpus petition] is not required unless the petitioner alleges facts which, if proved, would entitle him to federal habeas relief'), cert. denied, 482 U.S. 918, 919, 107 S.Ct. 3195, 96 L.Ed.2d 682 (1987). Furthermore, a petitioner seeking postconviction discovery also must meet the requirements of Rule 32.6(b), Ala. R. Crim. P., which states:
>
> > "'The petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.'"

775 So. 2d at 852–53 (footnote omitted). In applying the holding in Ex parte Land, this Court has held that a claim that is procedurally barred does not entitle a petitioner to discovery in regard to that claim. See Ex parte Hooks, 822 So. 2d 476, 481 (Ala. Crim. App. 2000).

In this case, as stated above, Thompson argued in the discovery motion that the requested documents were necessary to proceed on his Brady claims. All the issues raised by Thompson to support the Brady claim were without merit or were

insufficiently pleaded.

Indeed, the record shows that Agent Tubbs was questioned extensively about any prior drafts of Thompson's statement at the suppression hearing. Agent Tubbs testified that no other drafts existed. (Trial R. 2446.) Second, the Jasper burglaries were discussed extensively at a pretrial hearing concerning the introduction of Rule 404(b), Ala. E. Evid. (Trial R. 67-72.) Third, on direct appeal, this Court addressed Thompson's claim that the State failed to disclose statements that Thompson had made to Dr. Willis while he was being evaluated. We stated:

> "[I]n the present case, there was no evidence indicating that the State knew about the information in Dr. Willis's notes, nor was there any evidence from which that knowledge could be imputed to the State or presumed. Accordingly, there was no violation of Brady v. Maryland, 373 U.S. 83 (1963, in this instance."

Thompson, 153 So. 3d at 144. Fourth, in regard to Thompson's claim that the State failed to disclose information about the civil lawsuit, Thompson merely pleaded the following:

> "Based on information and belief, it would appear that several of the victims's families had filed a civil lawsuit against Mr. Thompson and the video game manufacturers. If the State spoke to any of the victims's families about such claims, none of this potential information was turned over to defense counsel. Further discovery will be

> necessary to fully explore this claim. The withholding of any of this evidence is in violation of Mr. Thompson's rights under the Fifth, Sixth, Eighth, and Fourteenth of the United States Constitution, the Alabama Constitution, and Alabama State law."

(Trial R. 240.) Clearly, Thompson failed to plead that any evidence existed much less that that evidence was exculpatory. Thus, this claim was insufficiently pleaded.

As the State argued, instead of moving to amend his postconviction petition Thompson filed a motion for discovery. The motion was extremely broad and appeared to be nothing more than a fishing expedition.

> "Our review of this petition and the exhibits filed with the petition shows that the majority of the requested discovery was unrelated to the claims raised in the Rule 32 petition, was unrelated to the case, and appeared to be merely an attempt to conduct a fishing expedition through all of the many and varied department and agency files -- a good portion of which contain privileged and confidential information."

Jackson v. State, 910 So. 2d 797, 810 (Ala. Crim. App. 2005).

We hold that Thompson failed to show good cause why the broad discovery motion should have been granted. The postconviction court did not err in denying this motion; Thompson is due no relief.

XIV.

Thompson next argues that the postconviction court erred in denying his motion for funds to secure a neuropsychologist and other medical experts to prepare for the postconviction proceedings.

Alabama has not extended the right to expert assistance required by Ake v. Oklahoma, 470 U.S. 68 (1985), to postconviction proceedings.

> "[T]his court has held that indigent defendants are not entitled to funds to hire experts to assist in postconviction litigation. See Ford v. State, 630 So. 2d 111 (Ala. Crim. App. 1991), aff'd, 630 So. 2d 113 (Ala. 1993), cert. denied, 511 U.S. 1078, 114 S.Ct. 1664, 128 L.Ed.2d 380 (1994); Holladay v. State, 629 So. 2d 673 (Ala. Crim. App. 1992), cert. denied, 510 U.S. 1171, 114 S.Ct. 1208, 127 L.Ed.2d 555 (1994); Hubbard v. State, 584 So. 2d 895, 900-01 (Ala. Crim. App. 1991), cert. denied, 502 U.S. 1041, 112 S.Ct. 896, 116 L.Ed.2d 798 (1992)."

Williams v. State, 783 So. 2d 108, 113 (Ala. Crim. App. 2000). See also Morris v. State, [Ms. CR-11-1925, April 29, 2016] ___ So. 3d ___ (Ala. Crim. App. 2016); James v. State, 61 So. 3d 357 (Ala. Crim. App. 2010); Bush v. State, 92 So. 3d 121 (Ala. Crim. App. 2009); Burgess v. State, 962 So. 2d 272 (Ala. Crim. App. 2005); McGahee v. State, 885 So. 2d 191 (Ala. Crim. App. 2003). Thompson is due no relief on this claim.

XV.

Thompson last argues that his sentence of death violates

the Supreme Court's decision in Ring v. Arizona, 536 U.S. 584 (2002), and its more recent decision in Hurst v. Florida, ___ U.S. ___, 136 S.Ct. 616 (2016), because, he says, a judge and not a jury ultimately sentenced Thompson to death. He also argues that "Alabama's method of administering capital punishment is unconstitutional pursuant to the Eighth and Fourteenth Amendments." (Thompson's brief, at p. 99.)

This Court on direct appeal held that Thompson's sentence of death did not violate Ring v. Arizona. See Thompson, 153 So. 3d at 179-80. Moreover, after the United States Supreme Court released Hurst v. Florida, the Alabama Supreme Court reaffirmed its holding that Alabama's capital sentencing scheme does not violate Ring and its progeny. See Ex parte Bohannon, 222 So. 3d 525 (Ala. 2016).

For the foregoing reasons, we affirm the postconviction court's summarily dismissal of Thompson's Rule 32, Ala. R. Crim. P. petition.

AFFIRMED.

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