

REL: March 8, 2019

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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1033

P.R.M.

v.

State of Alabama

Appeal from Etowah Circuit Court
(CC-09-928.61)

On Application for Rehearing

KELLUM, Judge.

The unpublished memorandum issued on November 9, 2018, is withdrawn and the following opinion is substituted therefor.

P.R.M. appeals the circuit court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he attacked his September 26, 2011, guilty-plea convictions for one count of first-degree rape, two counts of first-degree sodomy, one count of sexual abuse of a child less than 12 years old, and one count of incest, and his resulting November 8, 2011, sentences of 25 years' imprisonment for each of the rape and sodomy convictions, 20 years' imprisonment for the sexual-abuse conviction, and 10 years' imprisonment for the incest conviction. P.R.M. did not appeal his convictions and sentences.

On June 1, 2017, P.R.M. filed this, his second, Rule 32 petition.¹ In his petition, P.R.M. alleged that the trial court lacked jurisdiction to accept his guilty pleas or to sentence him because, he said, "the court doubted his competence to stand trial and ordered [him] to undergo a mental evaluation yet failed to make any legal determination

¹P.R.M. filed his first petition in 2015; the circuit court summarily dismissed the petition; and this Court affirmed the circuit court's judgment by unpublished memorandum. P.R.M. v. State (No. CR-15-1211), 236 So. 3d 167 (Ala. Crim. App. 2016) (table).

of [his] competency before it allowed him to enter a plea of guilty; thus, allowing [him] to be adjudicated while 'mentally incompetent.'" (C. 22.) In support of his claim, P.R.M. alleged that his trial counsel moved for a mental evaluation to determine his competency to stand trial and his mental state at the time of the offenses and that the trial court granted counsel's motion. P.R.M. claimed, however, that no competency evaluation was conducted before he entered his pleas and that the trial court never made a legal determination that he was competent to stand trial. According to P.R.M., by granting counsel's motion for a competency evaluation, the trial court found reasonable grounds to doubt his competency and "as well declared [him] INCOMPETENT." (C. 24; capitalization in original.) P.R.M. also alleged that by accepting his guilty pleas and sentencing him, the trial court effectively rescinded its order for a competency evaluation, in violation of Roy v. State, 680 So. 2d 936 (Ala. Crim. App. 1996), in which this Court held that a trial court commits reversible error when, after having ordered a defendant to undergo a competency evaluation, it rescinds that order based solely on the defendant's request and over the objection of

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the defendant's counsel when there are reasonable grounds to doubt the defendant's competency to stand trial. P.R.M. alleged no facts in his petition regarding his mental state at the time of his pleas.

On May 14, 2018, the State filed a motion to dismiss P.R.M.'s petition, arguing that P.R.M.'s claim was insufficiently pleaded, was precluded by Rules 32.2(a)(3), (a)(5), and (b), Ala. R. Crim. P. and was time-barred by Rule 32.2(c), Ala. R. Crim. P. On May 21, 2018, P.R.M. filed a reply to the State's motion, arguing that the State's motion should be dismissed as untimely filed, that his claim was jurisdictional and was not subject to the preclusions in Rule 32.2, Ala. R. Crim. P., and that his claim was sufficiently pleaded. On May 30, 2018, the circuit court issued an order summarily dismissing P.R.M.'s petition on the grounds asserted by the State. P.R.M. did not file a postjudgment motion.

On appeal, P.R.M. reasserts the claim raised in his petition and argues that the circuit court erred in summarily dismissing his petition. We disagree.

It is well settled that "[t]rial of a person who is incompetent violates the due process guarantees," Ex parte

Janezic, 723 So. 2d 725, 728 (Ala. 1997), and a claim that a Rule 32 petitioner "was tried and convicted while he was mentally incompetent" is a substantive due-process claim that is jurisdictional and not subject to the preclusions in Rule 32. Nicks v. State, 783 So. 2d 895, 908 (Ala. Crim. App. 1999). However, claims relating to a petitioner's competency to stand trial that are procedural in nature are not jurisdictional and are subject to the preclusions in Rule 32.2. See Nicks, 783 So. 2d at 906-08.

Although he attempts to couch his claim in terms of a substantive due-process claim that he was incompetent to stand trial, P.R.M.'s claim appears to be nothing more than a series of procedural due-process claims that are not jurisdictional and that are subject to the preclusions in Rule 32.2. P.R.M. challenged in his petition the failure to conduct a competency evaluation as ordered by the trial court, and the trial court's failure to make a legal determination of his competency before accepting his pleas, and he argued that, by accepting his pleas and sentencing him, the trial court effectively rescinded its order for a competency evaluation. However, whether a competency evaluation is conducted as

ordered by the court, whether the trial court made a legal determination of competency before trial, and whether the trial court rescinded its order for a competency evaluation are all procedural due-process issues, not substantive ones; thus, they are not jurisdictional and are subject to the preclusions in Rule 32.2. Therefore, to the extent that P.R.M.'s claim is a procedural due-process claim, it is precluded as successive by Rule 32.2(b) because P.R.M. raised a similar claim in his first Rule 32 petition.² Likewise, it is time-barred by Rule 32.2(c) because P.R.M.'s petition was filed over five years after his convictions and sentences became final.

To the extent that P.R.M.'s claim could be liberally construed as a substantive due-process claim that he was incompetent at the time he pleaded guilty, as noted above, P.R.M. pleaded no facts in his petition regarding his mental state at the time of his pleas. "A defendant is mentally incompetent to stand trial or to be sentenced for an offense if that defendant lacks sufficient present ability to assist

²This Court may take judicial notice of its own records. See Nettles v. State, 731 So. 2d 626, 629 (Ala. Crim. App. 1998), and Hull v. State, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992).

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in his or her defense by consulting with counsel with a reasonable degree of rational understanding of the facts and the legal proceedings against the defendant." Rule 11.1, Ala. R. Crim. P. P.R.M. made only a bare allegation in his petition that he was incompetent to stand trial without alleging any facts indicating that, at the time of his pleas, he lacked the ability to assist in his defense by consulting with his counsel with a reasonable degree of rational understanding of the facts and the legal proceedings against him. Rule 32.3, Ala. R. Crim. P., states that "[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., states that "[t]he 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." As this Court noted in Boyd v. State, 913 So. 2d 1113 (Ala. Crim. App. 2003):

"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[s] 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."

913 So. 2d at 1125. Because P.R.M. pleaded only a conclusion with no facts in support, he failed to satisfy his burden of pleading that he was, in fact, incompetent at the time he entered his guilty pleas.

On rehearing, P.R.M. argues that he did not have to plead in his petition facts regarding his mental state at the time he entered his guilty pleas in order to raise a substantive due-process claim of incompetency. According to P.R.M., he was required to plead only that the trial court doubted his competency to stand trial and did not make a legal determination of his competency. P.R.M. maintains that he satisfied his burden of pleading in that regard and that, therefore, his claim must be deemed a substantive due-process claim and not a procedural due-process claim and that to hold

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otherwise would conflict with this Court's holdings in Weeks v. State, 257 So. 3d 894 (Ala. Crim. App. 2018), and Glass v. State, 912 So. 2d 285 (Ala. Crim. App. 2004).

In Weeks, supra, this Court did nothing more than reaffirm our holding in Roy, supra, that a trial court commits reversible error when, after having ordered a defendant to undergo a competency evaluation, it rescinds that order based solely on the defendant's request and over the objection of the defendant's counsel when there are reasonable grounds to doubt the defendant's competency to stand trial. Both Weeks and Roy were direct appeals from a conviction and sentence, and the issue presented in those cases had been properly preserved in the trial court. In neither Weeks nor Roy did this Court speak to the issue of a Rule 32 petitioner's burden of pleading a substantive due-process claim of incompetency, nor did this Court address which claims relating to a defendant's competency are substantive and jurisdictional and which are procedural and nonjurisdictional. Therefore, nothing in our holding today conflicts with Weeks.

However, P.R.M. is correct that our holding today at least partially conflicts with this Court's opinion in Glass,

supra. In Glass, the petitioner alleged in his Rule 32 petition that "he was not mentally competent to stand trial" because, he said, "the trial court never made a legal determination on his competency despite the fact that the trial court ordered a mental evaluation." 912 So. 2d at 287. Specifically, the petitioner alleged "that the trial court [had] ordered a competency hearing and twice continued the case 'in order to establish the mental and stability and sanity of the Petitioner." Glass, 912 So. 2d at 288. On appeal from the circuit court's summary dismissal of the petition, this Court held that "[t]o the extent that this claim raises the issue whether [his] procedural due-process rights were violated, his claim is procedurally barred" but that "[t]o the extent that [the petitioner's] petition raises a substantive due-process claim -- that he was convicted while he was mentally incompetent to stand trial -- the petition is not subject to procedural bars." Glass, 912 So. 2d at 287-88.

Despite paying lip service to the distinction between a substantive due-process claim of incompetency and procedural due-process claims relating to competency, this Court in Glass ultimately remanded the case for further proceedings, not on

the substantive due-process claim that the petitioner was incompetent to stand trial, but on the petitioner's procedural due-process claims -- we directed the circuit court to determine "whether there was any inquiry into the matter of [the petitioner's] competency before his trial ... and, if so, whether a legal determination was made regarding his competency to stand trial." Glass, 912 So. 2d at 288. On remand, the circuit court found that there had been no inquiry into the petitioner's competency before trial, that no request for a competency evaluation had been made, and that there had been no grounds to doubt the petitioner's competency to stand trial. On return to remand, this Court affirmed the circuit court's judgment, by unpublished memorandum, holding that "the weight of the evidence supports the findings of the circuit court that no question of [the petitioner's] mental competency arose, no request for a mental evaluation was made, and no mental evaluation was ordered."

As P.R.M. correctly points out on rehearing, this Court in Glass did not place on the petitioner "the burden of pleading his mental state at the time of his" trial before ordering further proceedings on the petition. (P.R.M.'s brief

on application for rehearing, p. 8.) Indeed, a review of the petition in Glass³ reveals that the petitioner in that case, just like P.R.M., did not plead sufficiently specific facts in his petition indicating that he was, in fact, incompetent at the time of his trial so as to warrant further proceedings on his petition. This Court in Glass confused and conflated the substantive due-process claim that the petitioner was incompetent to stand trial with the procedural due-process claims of whether a competency evaluation had been ordered and whether the trial court had made a legal determination that the petitioner was competent to stand trial. Although we purported to remand the case on the substantive due-process claim, this Court in Glass actually remanded the case for further proceedings on the procedural due-process claims and did not even address whether the petitioner had satisfied his burden of pleading a substantive due-process claim. This Court erred in Glass in treating the petitioner's claims regarding whether a competency evaluation had been ordered and whether the trial court had made a legal determination that the petitioner was competent to stand trial as substantive

³See note 2, supra.

due-process claims rather than the procedural due-process claims they, in fact, were. Therefore, to the extent that Glass conflicts with this Court's previous holding in Nicks, supra, as well as with our holding today, it is hereby overruled.

P.R.M. also argues on appeal that the circuit court erred in summarily dismissing his petition because, he says, the State failed to refute the allegations in his petition and, therefore, those allegations must be accepted as true. It is well settled that, "[w]hen the State does not respond to a petitioner's allegations, the unrefuted statement of facts must be taken as true." Bates v. State, 620 So. 2d 745, 746 (Ala. Crim. App. 1992) (quoting Smith v. State, 581 So. 2d 1283, 1284 (Ala. Crim. App. 1991)). However, because any procedural due-process claim was precluded and because P.R.M. failed to satisfy his burden of pleading a substantive due-process claim, even accepting all of P.R.M.'s factual allegations in his petition as true, summary dismissal of his petition was still proper.

Rule 32.7(d), Ala. R. Crim. P., authorizes the circuit court to summarily dismiss a petitioner's Rule 32 petition

"[i]f 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"

See also Hannon v. State, 861 So. 2d 426, 427 (Ala. Crim. App. 2003); Cogman v. State, 852 So. 2d 191, 193 (Ala. Crim. App. 2002); Tatum v. State, 607 So. 2d 383, 384 (Ala. Crim. App. 1992). Because P.R.M.'s claim was either precluded or insufficiently pleaded, summary disposition of P.R.M.'s Rule 32 petition was appropriate.

Based on the foregoing, the judgment of the circuit court is affirmed.

APPLICATION OVERRULED; UNPUBLISHED MEMORANDUM ISSUED ON NOVEMBER 9, 2018, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED.

Windom, P.J., and McCool, Cole, and Minor, JJ., concur.