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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

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CR-17-1222

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Zackery Wedgeworth

v.

State of Alabama

Appeal from Tuscaloosa Circuit Court  
(CC-89-1382)

McCOOL, Judge.

Zackery Wedgeworth appeals the Tuscaloosa Circuit Court's summary dismissal of his pro se petition for postconviction relief. The petition was a standard form styled as a "Petition for Relief From Conviction or Sentence (pursuant to

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Temporary Rule 20, Alabama Rules of Criminal Procedure)."<sup>1</sup> The petition challenged Wedgeworth's 1991 convictions for capital murder and his resulting sentence of life in prison without the possibility of parole. This Court affirmed Wedgeworth's convictions and sentence on direct appeal. Wedgeworth v. State, 610 So. 2d 1244 (Ala. Crim. App. 1992). The certificate of judgment was issued on December 11, 1992.

The instant petition was filed in May 2018. On the form, Wedgeworth marked the general allegation that the trial court was without jurisdiction to render the judgment or to impose sentence. In an attached supplement, Wedgeworth made the specific argument that "the trial court record revealed that the victim's death was caused in a separate and different act by Mr. Frye when he ran over her with his pickup truck which occurred on Friday the next day after petitioner kidnapped, robbed, and left her alive." Thus, Wedgeworth appeared to argue that the evidence was insufficient to prove that he killed the victim. Without receiving a response from the State, the circuit court summarily dismissed Wedgeworth's

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<sup>1</sup>Temporary Rule 20 was replaced by Rule 32, Ala. R. Crim. P., effective January 1, 1991, the effective date of the Alabama Rules of Criminal Procedure. See discussion, *infra*.

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petition on July 31, 2018. However, the circuit court's order shows that the court treated Wedgeworth's petition as a motion for a judgment of acquittal under Rule 20, Ala. R. Crim. P., rather than a petition for postconviction relief under Rule 32, Ala. R. Crim. P.:

"Petitioner was sentenced on August 28, 1991. '[The Alabama Court of Criminal Appeals] and the Alabama Supreme Court have consistently held that a trial court retains jurisdiction to modify a sentence for 30 days after the sentence is pronounced.' Moore v. State, 814 So. 2d 308, 309 (Ala. Crim. App. 2001). Beyond the 30th day, the trial court only retains jurisdiction upon the timely filing of certain post-judgment motions. See Moore at 309 (listing motion for a new trial and requests to amend sentence as such motions). Motions for judgment of acquittal may be made post-conviction 'but no later than thirty (30) days after the pronouncement of sentence.' Ala. R. Crim. P. 20.3 (b)(1). A Rule 20 motion in this case must have been filed before September 27, 1991, for the Court to have retained jurisdiction over the sentence. As such, this petition is due to be and is hereby DISMISSED."

(C. 71; Capitalization in original.)

"[T]he substance of a motion and not its style determines what kind of motion it is." Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002). "A proceeding under [Rule 32] displaces all post-trial remedies except post-trial motions under Rule 24 and appeal. Any other post-conviction petition seeking relief

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from a conviction or sentence shall be treated as a proceeding under this rule." Rule 32.4, Ala. R. Crim. P. Our Supreme Court stated long ago: "[P]etitions for post-conviction remedies, presently governed by Temporary Rule 20, will be governed by Rule 32, Ala. R. Crim. P., beginning January 1, 1991, the effective date of the new Rules." Ex parte Rice, 565 So. 2d 606 n.1 (Ala. 1990).

In the present case, we conclude that Wedgeworth's petition should have been treated as a Rule 32 petition and that the appropriate course of action is for this Court to reverse the circuit court's judgment and remand the case for that court to treat the petition according to its substance rather than its form. See, e.g., Shapley v. State, 260 So. 3d 69 (Ala. Crim. App. 2018) (reversing the circuit court's order improperly treating the defendant's motion as a motion to correct a clerical error pursuant to Rule 29, Ala. R. Crim. P., rather than a Rule 32 petition).

Based on the foregoing, we direct the circuit court to set aside its earlier ruling and to treat Wedgeworth's petition as a petition for postconviction relief under Rule 32, Ala. R. Crim. P. Accordingly, we reverse the circuit

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court's judgment and remand the case for proceedings consistent with this opinion.

REVERSED AND REMANDED.

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

Minor, J., dissents, with opinion.

MINOR, Judge, dissenting.

This Court reverses the circuit court's summary dismissal of Zackery Wedgeworth's petition for postconviction relief and remands the case for the circuit court to treat his petition as one filed under Rule 32, Ala. R. Crim. P. Wedgeworth filed his petition on a form entitled "Petition for Relief from Conviction or Sentence (Pursuant to Temporary Rule 20, Alabama Rules of Criminal Procedure)." The petition challenged Wedgeworth's 1991 convictions for capital murder and his sentence of life imprisonment without the possibility of parole.

As this Court recognizes, the claim presented in Wedgeworth's petition--a nonjurisdictional claim challenging the sufficiency of the evidence--is a claim cognizable under Rule 32, Ala. R. Crim. P. Wedgeworth's use of the "Temporary Rule 20" form indicates that he understood that his claim was a postconviction claim for relief, a procedural mechanism that Wedgeworth has used on many occasions.<sup>2</sup> The Temporary Rule 20 form Wedgeworth used is identical in several respects to the standard form that accompanies Rule 32, Ala. R. Crim. P., and

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<sup>2</sup>On that form, Wedgeworth indicated that he had filed numerous postconviction petitions.

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Temporary Rule 20, Ala. R. Crim. P., was replaced by Rule 32, Ala. R. Crim. P., effective January 1, 1991. See Ex parte Rice, 565 So. 2d 606, 606 n.1 (Ala. 1990). Thus, it appears beyond question that Wedgeworth understood what he was filing.

The trial court, however, appears to have treated the filing as a motion under current Rule 20, Ala. R. Crim. P., rather than as a petition under Rule 32, Ala. R. Crim. P. In its order summarily dismissing the petition, the trial court stated:

"Petitioner was sentenced on August 28, 1991. '[The Alabama Court of Criminal Appeals] and the Alabama Supreme Court have consistently held that a trial court retains jurisdiction to modify a sentence for 30 days after the sentence is pronounced.' Moore v. State, 814 So. 2d 308, 309 (Ala. Crim. App. 2001). Beyond the 30th day, the trial court only retains jurisdiction upon the timely filing of certain post-judgment motions. See Moore at 309 (listing motion for a new trial and requests to amend sentence as such motions). Motions for judgment of acquittal may be made post-conviction 'but no later than thirty (30) days after the pronouncement of sentence.' Ala. R. Crim. P. 20.3 (b)(1). A Rule 20 motion in this case must have been filed before September 27, 1991, for the Court to have retained jurisdiction over the sentence. As such, this petition is due to be and is hereby DISMISSED."

(C. 71; capitalization in original.)

This Court reverses the judgment of the trial court on the sole basis that "Wedgeworth's petition should have been

treated as a Rule 32 petition." \_\_ So. 3d at \_\_. The Court does so on the authority of Shapley v. State, 260 So. 3d 69 (Ala. Crim. App. 2018). Shapley is distinguishable, however, in this important respect: The trial court in Shapley granted the petitioner's request to proceed in forma pauperis. Shapley, 260 So. 3d at 71 n.2 ("Shapley was granted indigency status as to his motion."). Thus, the trial court clearly had jurisdiction over Shapley's motion that in substance was a Rule 32 petition.

Our caselaw is clear that "[t]he substance of a motion and not its style determines what kind of motion it is." Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002). Here, Wedgeworth filed a petition that was in substance a Rule 32 petition. (It practically was a Rule 32 petition in form as well.) But the record does not affirmatively indicate whether, before the trial court denied Wedgeworth's petition, Wedgeworth either paid the filing fee or was granted indigency status.

It is well settled that "[a] circuit court does not obtain subject-matter jurisdiction of a Rule 32 petition until either a filing fee has been paid or a request to proceed in



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forma pauperis has been granted." Hyde v. State, 894 So. 2d 808, 809 (Ala. Crim. App. 2004). Thus, it is not clear whether the trial court had subject-matter jurisdiction to rule on Wedgeworth's petition. See, e.g., Whitson v. State, 891 So. 2d 421 (Ala. Crim. App. 2004); Maxwell v. State, 897 So. 2d 426 (Ala. Crim. App. 2004); and Jackson v. State, 854 So. 2d 157 (Ala. Crim. App. 2002). If the trial court did not have jurisdiction over the petition, its judgment--regardless of its reasoning--is void. And, if its judgment is void, this Court does not have jurisdiction over this appeal. Madden v. State, 885 So. 2d 841, 844 (Ala. Crim. App. 2004) ("A void judgment will not support an appeal.").

Rather than ignoring the jurisdictional question and summarily reversing a judgment that might be void, I would simply remand this matter for the trial court to make written findings as to this issue. Such a remand could be accomplished relatively quickly under Rule 10(g), Ala. R. App. P., and would clarify whether this Court in fact has jurisdiction over this appeal.

I respectfully dissent.