REL: March 8, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-18-0004

S.R.A.

v.

State of Alabama

Appeal from Etowah Circuit Court
(CV-18-49)

COLE, Judge.

S.R.A. appeals the circuit court's summary dismissal of a petition he styled as a petition for a writ of habeas corpus. We affirm.

Facts and Procedural History

On February 9, 2012, S.R.A. was convicted of first-degree rape, see §§ 13A-6-61(a)(3), Ala. Code 1975, second-degree

rape, see § 13A-6-62, Ala. Code 1975, and incest, see § 13A-13-3, Ala. Code 1975. (Supp. C. 10-12.) The trial court sentenced S.R.A. to 25 years' imprisonment for his first-degree-rape conviction, 20 years' imprisonment for his second-degree-rape conviction, and 10 years' imprisonment for his incest conviction, the sentences to be served concurrently. (Supp. C. 10-12.)

On appeal from his convictions and sentences, this Court, in its unpublished memorandum, summarized the facts underlying S.R.A.'s convictions as follows:

> "S.R.A. married A.A.'s mother when A.A. was 4 years old and eventually adopted her when she was a senior in high school. When A.A. was 11 years old, S.R.A. began having sexual intercourse with her. After S.R.A. began having sexual intercourse with A.A., the abuse continued 'pretty much every day.' A.A. stated that S.R.A. would routinely 'just beg [her]' to have sex. (R. 154). A.A. was afraid to tell anyone about the abuse, including her mother.
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> "Finally, on December 31, 2009, A.A. told a friend, Russell Shelly, about the abuse. She also told Russell's mother, Joyce Shelly, who was a retired state trooper. Joyce Shelly advised A.A. to set up a tape recorder in her bedroom to record S.R.A. asking her to have sex with him. At trial A.A. testified that she knew S.R.A. was 'going to ask for sex' on a particular day because 'he always did when it was just us' and they were home alone. (R. 182). A.A. recorded S.R.A. asking her to have sex later that same month, and filed a complaint against S.R.A. with the police department. A.A. took

> the recording to Officer Clay Johnson. Officer Johnson then took A.A. to the district attorney's office where they assisted her in recording telephone conversations with S.R.A. regarding their sexual relationship. At trial, the circuit court allowed in both the recording of S.R.A. propositioning A.A. for sex in her bedroom as well as the telephone recordings.
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> "S.R.A. also testified at trial. He claimed he never engaged in sexual activity with A.A. while she was a minor. He alleged that their sexual relationship began when she was 20 years old and it was limited to A.A. 'performing masturbation' on S.R.A. (R. 275.)"

S.R.A. v. State (No. CR-11-1479, Dec. 7, 2012), 155 So. 3d 1128 (Ala. Crim. App. 2012) (table). This Court affirmed S.R.A.'s convictions and sentences. Id.

On September 13, 2013, S.R.A. filed a Rule 32, Ala. R. Crim. P., petition for postconviction relief in the Etowah Circuit Court. In his Rule 32 petition, S.R.A. raised several claims of ineffective assistance of counsel. The circuit court summarily dismissed S.R.A.'s Rule 32 petition, and S.R.A. appealed. On appeal, this Court, by unpublished memorandum, affirmed the circuit court's judgment. See S.R.A. v. State (CR-15-0910, Aug. 5, 2016), 231 So. 3d 1190 (Ala. Crim. App. 2016) (table).

On March 16, 2018, S.R.A. filed what he styled as a petition for a writ of habeas corpus in the Etowah Circuit Court.[1] (C. 9-11.) In his "habeas" petition, S.R.A. alleged that the circuit court "overlooked or omitted the fact that[, under] § 13A-5-6(c), he was supposed to impose, by ORDER, an additional penalty of not less than 10 years of post release supervision to be served upon [his] release from incarceration." (C. 9.) According to S.R.A., "had the sentencing Judge been made aware of, by the State, or by Defense Counsel of this additional penalty ... his actual sentence of incarceration would have been less[,]" and "impos[ing] this penalty now [would be] an additional penalty that was not meant by the Sentencing Court, and would bring about prejudice to [him]." (C. 10.) Thus, S.R.A. requested that the circuit court "re-sentence [him] to a 15 year sentence on [his first-degree-rape conviction], a 15 year sentence on [his second-degree-rape conviction], and a 10 year sentence (unchanged) on [his incest conviction], all sentences to run concurrent[ly], and an additional penalty of 10 years

[1]S.R.A. also filed a request for indigency status, requesting that he be allowed to file his petition without having to pay the required filing fee. The circuit court granted his request. (C. 8.)

post release supervision." (C. 10.) In S.R.A.'s view, resentencing him in this way "would still equate to the 25 year sentence ordered by the sentencing court." (C. 10.)

On August 31, 2018, the State answered S.R.A.'s habeas petition, arguing that it "does not state grounds which would support the issuance of such a writ, pursuant to Ala. Code § 15-21-24 (1975)." (C. 17.)

On September 4, 2018, the circuit court summarily dismissed S.R.A.'s petition, agreeing with the State and holding that S.R.A.'s "petition for a writ of habeas corpus is dismissed for failure to state a claim upon which relief can be granted." (C. 19, 20.)

On September 19, 2018, S.R.A. attempted to amend his petition, again alleging that he "should have been given an additional penalty of ten (10) years, post release supervision, but was not." (C. 25.) S.R.A. claimed that "simply exchanging the ten (10) years of post release supervision for ten (10) years of actual incarceration time," would be an appropriate remedy. (C. 25.) Thus, S.R.A. asked the circuit court to resentence him to "time served and

immediately begin serving his ten (10) years of post release supervision." (C. 25.)

On September 24, 2018, the circuit court dismissed S.R.A.'s amended petition as moot (C. 28), and S.R.A. filed a timely notice of appeal (C. 29).

Discussion

On appeal, S.R.A. argues that the circuit court's summary dismissal of his petition "was in conflict with the laws of this State" because, he says, he was not sentenced pursuant to § 13A-5-6(c), Ala. Code 1975. (S.R.A.'s brief, p. 6.) S.R.A. further argues that, even though he should have been sentenced under § 13A-5-6(c), to impose the 10-year postrelease supervision under that section as an addition to his current sentences "would be an additional penalty that would prejudice" him. Thus, S.R.A. concludes that the circuit court should have resentenced him to "15 years on [his first-degree-rape conviction], 15 years on [his second-degree-rape conviction], and 10 years on [his incest conviction] (unchanged); all sentences to run concurrent[ly], and then [added] the additional penalty of 10 years post release supervision." (S.R.A.'s brief, p. 6.) According to S.R.A.,

resentencing him in this way would satisfy the requirements of § 13A-5-6(c), Ala. Code 1975, and "would still equate to the 25 year[] sentence ordered by the sentencing court." (S.R.A.'s brief, p. 7.)

Before addressing S.R.A.'s claim on appeal, however, we note that S.R.A.'s illegal-sentence claim is not cognizable under Alabama's habeas statute, see § 15-21-24, Ala. Code 1975. Rather, S.R.A.'s claim is one that falls squarely within the purview of Rule 32.1(c), Ala. R. Crim. P. Because courts must treat a petition according to its substance and not its style, see Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002), this Court must treat S.R.A's habeas petition as his second Rule 32, Ala. R. Crim. P., petition for postconviction relief. With this in mind, this Court turns to the question of whether the circuit court properly disposed of S.R.A.'s petition.

In its brief on appeal, the State claims that, although the circuit court should have treated S.R.A.'s habeas petition as a Rule 32 petition for postconviction relief, this Court should affirm the circuit court's summary dismissal of S.R.A.'s petition because the petition was "filed in the correct county" for a Rule 32 petition, i.e., the county in

which he was convicted, and was properly summarily dismissed. (State's brief, pp. 7-8 (citing Knight v. State, 252 So. 3d 1108, 1113 (Ala. Crim. App. 2017).) In Bagley v. State, 186 So. 3d 488 (Ala. Crim. App. 2015), this Court faced a situation nearly identical to the one presented in this case.

In that case, this Court explained that Bagley filed a "disjointed, confusing, and virtually incoherent" petition that he styled as a petition for a writ of habeas corpus and that he filed it in the county in which he was convicted. Bagley, 186 So. 3d at 489. This Court further explained that the circuit court granted Bagley's request for indigency status and, without receiving a response from the State, summarily dismissed Bagley's petition, finding that "'JAMES E. BAGLEY'S PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM is hereby DENIED.'" Id. (capitalization in original). This Court then held that, although Bagley's petition raised a claim cognizable under Rule 32, Ala. R. Crim. P., and although the circuit court clearly identified Bagley's petition as a habeas petition,

> "circuit judges 'are presumed to know the law and to follow it in making their decisions.' Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996). The circuit court's identification of Bagley's petition

> according to its style is not alone sufficient to overcome the presumption that the circuit court followed the law when dismissing Bagley's petition. Moreover, nothing else in the record affirmatively indicates that the circuit court did not properly treat Bagley's petition as a Rule 32 petition and summarily dismiss it. In the absence of any affirmative indication otherwise, we presume that the circuit court properly treated Bagley's petition as a Rule 32 petition for postconviction relief and summarily dismissed it."

Bagley, 186 So. 3d at 489.

Here, as in Bagley, S.R.A. filed a petition he styled as a petition for a writ of habeas corpus in the county in which he was convicted, raising a claim that is cognizable under Rule 32.1(c), Ala. R. Crim. P., and the circuit court granted S.R.A.'s request for indigency status. Although the circuit court's order dismissing S.R.A.'s habeas petition is longer than the order dismissing Bagley's petition, the length of an order is not an affirmative indication as to how the circuit court treated a petition.

Although this Court in Bagley noted that the order dismissing Bagley's petition was a "commonly used standardized-fill-in-the-blank form" that identified Bagley's petition as a habeas petition, that order is not materially different from the one issued in this case. Although it is

true that the circuit court's order in this case not only identified S.R.A.'s petition as one seeking habeas relief, but also noted that the State argued that S.R.A.'s claim was not a claim that would support habeas relief and correctly noted that the State's argument was correct, see § 15-21-24, Ala. Code 1975, the circuit court's judgment does not affirmatively demonstrate that it treated S.R.A.'s petition improperly.

Rather, the circuit court's judgment simply states: "Wherefore, [S.R.A.'s] Petition for Writ of Habeas Corpus is dismissed for failure to state a claim upon which relief can be granted." (C. 19, 20.) This language is nearly identical to the language found in Rule 32.7(d), Ala. R. Crim. P., which provides that a circuit court may summarily dismiss a Rule 32 petition if it "fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief." (Emphasis added.) Because the circuit court's judgment tracks the language found in Rule 32.7(d), we must presume that the circuit court properly treated S.R.A.'s petition as a Rule 32 petition.

Even if we were to presume that the circuit court improperly treated S.R.A.'s petition as a petition for a writ

of habeas corpus, however, this Court may still affirm the circuit court's judgment. This Court explained as much in Bagley, holding that, "even if the circuit court did improperly treat Bagley's petition as a petition for a writ of habeas corpus, it is well settled that, with limited exceptions not applicable here, this Court may affirm a circuit court's judgment if it is correct for any reason." 186 So. 3d at 489 (and the cases cited therein).

Two years after this Court decided Bagley, it unanimously reaffirmed its holding, explaining that "even if we were to presume that the circuit court summarily dismissed [a] petition on an improper ground, this Court may nonetheless affirm the court's judgment if it is correct for another reason." Knight v. State, 252 So. 3d 1108, 1112 (Ala. Crim. App. 2017).

Here, even if we presume that the circuit court improperly treated S.R.A.'s petition as a petition for a writ of habeas corpus, "[f]or the reasons explained below, summary dismissal of [S.R.A.'s] petition was appropriate." Bagley, 186 So. 3d at 489-90.

As set out above, S.R.A. alleged in his petition that his sentence was "illegal" because, he said, he should have been sentenced under § 13A-5-6(c), Ala. Code 1975. This claim is meritless and does not entitle S.R.A. to any relief.

Although it is true that § 13A-5-6(c), Ala. Code 1975, requires circuit courts to "impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration" when the defendant is "is convicted of a Class A felony sex offense involving a child," § 13A-5-6(c) does not apply to S.R.A.'s conviction for first-degree rape. As this Court has explained, "'[a] defendant's sentence is determined by the law in effect at the time of the commission of the offense.'" Garner v. State, 977 So. 2d 533, 539 (Ala. Crim. App. 2007) (quoting Davis v. State, 571 So. 2d 1287, 1289 (Ala. Crim. App. 1990)). Section 13A-5-6(c) became effective on October 1, 2005. Id. Thus, the sentencing requirements of § 13A-5-6(c) do not apply to any offense committed before that date.

Here, according to the record in S.R.A.'s direct appeal,[2] the events giving rise to S.R.A.'s conviction for first-degree rape occurred before A.A. turned 12 years old. (Record in CR-11-1479, C. 11.) At S.R.A.'s trial, A.A. testified that she was born on October 21, 1988. (Record in CR-11-1479, R. 140-41.) Thus, A.A. turned 12 years old on October 21, 2000--years before § 13A-5-6(c) became effective. (Record in CR-11-1479, R. 140-41.) Accordingly, § 13A-5-6(c) was not in effect at the time S.R.A. committed first-degree rape, and the circuit court could not have applied that statute in sentencing him. See Garner, 977 So. 2d at 539 (finding that the circuit court erred when it imposed a sentence under § 13A-5-6(c) when the offense was committed before the effective date of that statute). Thus, regardless of how it treated S.R.A.'s petition, the circuit court properly dismissed S.R.A.'s meritless claim.

[2]This Court takes judicial notice of the record filed with this Court in S.R.A.'s direct appeal. See Hull v. State, 607 So. 2d 369, 371 (Ala. Crim. App. 1992); Ex parte Salter, 520 So. 2d 213, 216 (Ala. Crim App. 1987).

Conclusion

Because it is unnecessary "'to remand this cause so that [S.R.A.] will have the opportunity to file a petition in the proper form that will be promptly dismissed,'" Bagley, 186 So. 3d at 490 (quoting Maddox v. State, 662 So. 2d 915, 916 (Ala. 1995)), and because it would be a waste of scarce judicial resources to remand this case to the circuit court to amend a properly decided order only to change the words "petition for a writ of habeas corpus" to "Rule 32 petition," we affirm the circuit court's judgment.

AFFIRMED.

Minor, J., concurs. McCool, J., concurs in the result. Windom, P.J., dissents. Kellum, J., dissents , with opinion.

KELLUM, Judge, dissenting.

S.R.A. appeals the circuit court's dismissal of what he styled as a petition for a writ of habeas corpus. After receiving a response from the State, the circuit court dismissed the petition, agreeing with the State that S.R.A.'s petition "fails to state grounds which would support issuance of such a writ, pursuant to Section 15-21-24, Alabama Code (1975)" and dismissing the petition "for failure to state a claim upon which relief can be granted." (C. 19.) In his petition, S.R.A. challenged the legality of his sentences for his 2012 convictions for first-degree rape, second-degree rape, and incest. As the main opinion correctly recognizes, although styled as a petition for a writ of habeas corpus, the claim S.R.A. raised in the petition was cognizable in a Rule 32, Ala. R. Crim. P., petition for postconviction relief.

It is well settled that a motion or petition must be treated according to its substance not its style. See, e.g., Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002). In this case, the circuit court did exactly the opposite; it treated S.R.A.'s petition according to its style rather than its substance, specifically finding that S.R.A.'s claim was not a

valid ground for the issuance of a writ of habeas corpus. Generally, circuit judges "are presumed to know the law and to follow it in making their decisions." Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996). Thus, when the record does not affirmatively reflect otherwise, this Court presumes that the circuit court treated a motion or petition properly. See, e.g., Knight v. State, 252 So. 3d 1108, 1111 (Ala. Crim. App. 2017) ("Absent any indication in the record to the contrary, we presume that the circuit court properly treated [the] petition as a Rule 32 petition for postconviction relief and ruled on it accordingly."), and Bagley v. State, 186 So. 3d 488, 489 (Ala. Crim. App. 2015) (holding that, although the circuit court identified the petition in its order according to the style of the petition, that was "not alone sufficient to overcome the presumption that the circuit court followed the law when dismissing [the] petition [where] nothing else in the record affirmatively indicate[s] that the circuit court did not properly treat [the] petition as a Rule 32 petition").

The main opinion concludes that Knight and Bagley control here and that the circuit court's order in this case "is not materially different" from the circuit court's order in

Bagley. ___ So. 3d at ___. I disagree. In Bagley, the circuit court issued a single-sentence order stating: "'JAMES E. BAGLEY'S PETITION FOR A WRIT OF HABEAS CORPUS AD TESTIFICANDUM is hereby DENIED.'" 186 So. 2d at 489 (capitalization in the original). The circuit court did not state a basis for denying the petition and, other than the circuit court's identification of the petition according to its style, the record contained no indication that the circuit court treated the petition improperly or that it denied the petition on an improper basis. In this case, however, a common-sense reading of the circuit court's order clearly shows that the basis of its dismissal of S.R.A.'s petition was that S.R.A. had failed to state a proper claim for which he would be entitled to relief under § 15-21-24, the statute setting forth the grounds on which a writ a habeas corpus may be issued.[3] And the circuit court was correct -- the alleged illegality of S.R.A.'s sentences is not a proper claim under § 15-21-24.

[3]The mere fact that the circuit court used the phrase "failure to state a claim upon which relief can be granted," and a similar phrase appears in Rule 32.7(d), does not, in my view, overcome the circuit court's express reliance in its order on § 15-21-24.

As the main opinion correctly points out, in both Knight and Bagley, this Court recognized that, even if the circuit courts in those cases had treated the petitions improperly, with certain limited exceptions, the general rule is that this Court may affirm a circuit court's judgment if it is correct for any reason. However, the main opinion fails to recognize the context in which this Court made that statement in each of those opinions. In Knight, we made that statement immediately after we stated: "Absent any indication in the record to the contrary, we presume that the circuit court properly treated [the] petition as a Rule 32 petition for postconviction relief and ruled on it accordingly." 252 So. 3d 1108. In Bagley, too, we made that statement immediately after we stated: "In the absence of any affirmative indication otherwise, we presume that the circuit court properly treated [the] petition as a Rule 32 petition for postconviction relief and summarily dismissed it." 186 So. 3d at 489. Thus, in context, this Court's statement in Knight and Bagley -- that, even if the circuit court had treated the petition improperly, this Court could affirm the judgment if correct for any reason -- was qualified by the fact that there was no affirmative indication

in the records in those cases that the circuit courts had treated the petitions improperly. In other words, Knight and Bagley stand for the proposition that, as long as there is no affirmative indication in the record that the circuit court treated the petition improperly, even if the court did, in fact, treat the petition improperly, we may affirm the judgment if it was correct for any reason. We did not hold in Knight or Bagley that this Court may affirm a circuit court's judgment for any reason where the record affirmatively indicates that the circuit court improperly treated the petition as something it was not.

In this case, unlike in Knight and Bagley, the record contains an affirmative indication that the circuit court improperly treated S.R.A.'s petition as a petition for a writ of habeas corpus, and not as a Rule 32 petition. Where the record affirmatively reflects that the circuit court erroneously treated a motion or petition according to its style rather than its substance, I believe we should reverse the circuit court's judgment and remand the cause for the circuit court to properly treat the motion or petition according to its substance as this Court did in Shapley v.

State, 260 So. 3d 69, 71 (Ala. Crim. App. 2018). In that case, the petitioner filed what he styled as a Rule 29, Ala. R. Crim. P., motion to correct a clerical error, but which was, in fact, a Rule 32 petition challenging the legality of his sentence. This Court unanimously reversed the circuit court's judgment and remanded the cause for the circuit court to treat the petition as a Rule 32 petition because "the circuit court appears to have considered whether the record should be corrected for a clerical error" rather than considering whether the petitioner "was due relief regarding his claim of improper sentencing." 260 So. 3d at 71. Similarly, here, the circuit court's order indicates that it considered whether S.R.A. was entitled to a writ of habeas corpus rather than whether S.R.A. was due relief on his claim that his sentences were illegal.

I would reverse the circuit court's judgment and remand this cause for the circuit court to properly treat S.R.A.'s petition as a Rule 32 petition for postconviction relief. Although I recognize that judicial resources in this state are scarce, an overburdened judicial system is not a valid basis

on which to uphold a circuit court's improper application of the law. Therefore, I respectfully dissent.