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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-0246

Darryl Anthony Dennis

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-95-3347.67; CC-95-3348.67)

On Return to Remand¹

COLE, Judge.

¹On July 9, 2018, this Court remanded this case to the circuit court by order.

Darryl Anthony Dennis appeals the circuit court's summary dismissal of his eighth Rule 32, Ala. R. Crim. P., petition for postconviction relief. We affirm.

Facts and Procedural History

In 1995, Dennis was charged with one count of first-degree rape, see § 13A-6-61, Ala. Code 1975, and one count of first-degree burglary, see § 13A-7-5, Ala. Code 1975. This Court, in an unpublished memorandum affirming those convictions, summarized the State's evidence at Dennis's trial as follows:

"[O]n August 19, 1995, the victim left her apartment unlocked while she showered. The victim did this because she was expecting the arrival of a girlfriend, and she did not want her friend to have to wait outside if she arrived before the victim got out of the shower.

"When the victim got out of the shower and walked out of the bathroom, she discovered [Dennis] standing in her bedroom. [Dennis] pulled the victim onto the bed, raped her, and forced her to perform oral sex, before leaving the apartment. After [Dennis] left her apartment, the victim called 911 and reported the incident to law enforcement officials. While the victim remained in her bathroom, her girlfriend arrived, followed by the police. The victim put on a pair of shorts and a top, and was taken to the hospital for treatment.

"[Dennis] contended that he had encountered the victim earlier in the day and had sexually propositioned her. According to [Dennis], the

victim invited him into her apartment, and agreed to engage in consensual sexual intercourse with him for money. [Dennis] stated that the victim became upset when she realized he had not used a condom during intercourse. She then ran into the bathroom and slammed the door. He left the apartment while she was still in the bathroom.

"At trial, the parties entered into a stipulation that the DNA from the semen on the victim's shorts matched [Dennis's] DNA."

Dennis v. State (No. CR-95-1699, Oct. 31, 1997), 727 So. 2d 176 (Ala. Crim. App. 1997) (table). Based on this evidence, the jury found Dennis guilty as charged, and the circuit court sentenced Dennis to 35 years in prison for each of his convictions. This Court affirmed Dennis's convictions and sentences in an unpublished memorandum and issued a certificate of judgment on May 29, 1998.

Since then, including the petition underlying this appeal, Dennis has filed eight Rule 32 petitions challenging his convictions and sentences. In each of those petitions, Dennis alleged that, during jury deliberations, the trial judge entered the jury-deliberation room, removed a newspaper from that room, and admonished the jury without either Dennis or his counsel being present.² Although Dennis's claims

²This Court takes judicial notice of the records filed with this Court in Dennis's direct appeal and in his appeals

regarding the trial judges's alleged conduct have taken various forms over his eight petitions (e.g., a violation of his right to be present and a denial of his right to counsel), each claim has been rooted in those basic allegations.

Starting with his first petition, which Dennis filed on May 26, 2000, Dennis alleged that his right to be present at all stages of his trial was violated because, he said, while the jury was deliberating and while "neither [Dennis] nor his lawyer were present,"

"it appears that the Court entered the jury room after speaking with one of the prosecutors (Affidavit of Nicole Parker, attached). After that conversation, the same witness reports that the Court confiscated a newspaper from one of the jurors[, which] ... contained an article about this case. The Court's conversations with the jury are not recorded in the transcript of the trial."

(Record in CR-00-0912, C. 23.) But the judge who presided over Dennis's trial also presided over Dennis's first Rule 32 petition and, after holding a hearing on Dennis's petition, denied Dennis's claim that "[h]is right to be present at all stages of the proceedings was violated when the court

from the dismissals of his previous Rule 32 petitions. See P.R.M. v. State, [Ms. CR-17-1033, Mar. 8, 2019] ___ So. 3d ___, ___ n.2 (Ala. Crim. App. 2019) (citing 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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confiscated a newspaper from one of the jurors prior to the arrival of [Dennis] and his counsel." (Record in CR-00-0912, C. 40.) In its order, the circuit court concluded, in part, that, "as this court stated at length at the hearing on the Rule 32 motion, it has always been the practice of this court to conduct all proceedings in the defendant's presence. No witness was offered at the hearing on the Rule 32 motion." (Record in CR-00-0912, C. 40.)

After the circuit court denied Dennis's petition, Dennis filed a "motion to amend," in which he argued that he "was denied his Sixth Amendment right to counsel during the trial court's off-the-record confiscation of a newspaper from the jury." (Record in CR-00-0912, C. 43.) To support his claim, Dennis attached to his amendment a letter purportedly authored by James Brandyburg (one of the assistant district attorneys who prosecuted Dennis), in which Brandyburg explained:

"The trial judge was advised by one of the attorneys that a juror was observed entering the 'open' courtroom with a newspaper. My recollection of this incident is that all the attorneys were present when the trial judge promptly removed the newspaper. Although I do not recall who informed the judge, or the specifics on how the newspaper was removed, it is obvious that based on [Dennis's] claim that I was not the only person present privy to this incident."

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(Record in CR-00-0912, C. 54-55.) The circuit court did not rule on Dennis's motion. Dennis appealed.

On appeal, this Court affirmed by unpublished memorandum the circuit court's denial of Dennis's petition, in which Dennis claimed that the trial court had entered the jury room, confiscated a newspaper, and admonished the jury without Dennis or his counsel being present. See Dennis v. State (No. CR-00-0912, Aug. 24, 2001), 837 So. 2d 888 (Ala. Crim. App. 2001) (table).

On February 13, 2001, Dennis filed his second Rule 32 petition. In that petition, Dennis alleged that he was denied the right to counsel during a critical stage of his trial when "the trial court entered the jurors' deliberating room and confiscated a Mobile Press Newspaper from the jurors with information concerning [Dennis's] trial. This incident occurred off-the-record and was not recorded in the court reporter's record on direct appeal." (Record in CR-01-1480, C. 43.) To support his allegation, Dennis again cited the Brandyburg letter. (Record in CR-01-1480, C. 43.)

In response, the State alleged that, because Dennis's first petition "was addressed on its merits," and because

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Dennis's claim about the circuit court's confiscating a newspaper was the same as, or similar to, the claim Dennis raised in his first petition, Dennis's petition was a successive petition under Rule 32.2(b), Ala. R. Crim. P. (Record in CR-01-1480, C. 53-57.) The circuit court agreed with the State and summarily dismissed Dennis's claim as successive under Rule 32.2(b), Ala. R. Crim. P. (Record in CR-01-1480, C. 84-87.) Dennis appealed, and this Court affirmed the circuit court's decision in an unpublished memorandum. See Dennis v. State (No. CR-01-1480, Sept. 20, 2002), 868 So. 2d 488 (Ala. Crim. App. 2002) (table).

Thereafter, Dennis raised the same denial-of-counsel claim in his third Rule 32 petition. (Record in CR-02-0855, C. 47-49.) The circuit court again summarily dismissed that claim, Dennis again appealed, and this Court again affirmed the circuit court's judgment by an unpublished memorandum. In that unpublished memorandum, this Court held:

"[Dennis] argues that he was denied counsel during a critical stage of his trial. Specifically, he contends that, during the jury's deliberations and outside the presence of his counsel, the trial court entered the jury deliberation room and removed a newspaper that contained an article about the trial. This Court addressed the merits of and rejected the same or a similar claim on appeal from

the dismissal of [Dennis's] second Rule 32 petition. Therefore, that claim is precluded as successive. See Rule 32.2(b), Ala. R. Crim. P."

(Emphasis added.) Dennis v. State (No. CR-02-0855, Apr. 18, 2003), 880 So. 2d 513 (Ala. Crim. App. 2003) (table).

Undeterred by the circuit court's previous decisions and this Court's affirmances of those decisions, Dennis again raised the same denial-of-counsel claim in his fourth and fifth Rule 32 petitions. (See Record in CR-05-2105, C. 50, and in CR-09-0419, C. 57.) The circuit court summarily dismissed those petitions, Dennis appealed, and this Court affirmed those decisions by unpublished memorandums. See Dennis v. State (No. CR-05-2105, Jan. 12, 2007), 4 So. 3d 588 (Ala. Crim. App. 2007) (table); Dennis v. State (No. CR-09-0419, June 18, 2010), 77 So. 3d 629 (Ala. Crim. App. 2010) (table).

About three years after this Court affirmed the summary dismissal of Dennis's fifth Rule 32 petition, Dennis filed his sixth Rule 32 petition. In that petition, Dennis again reasserted his denial-of-counsel claim. Dennis also raised a slight variation of that claim, alleging that his denial-of-counsel claim "was previously denied due to the State's fraud on the court." (Record in CR-13-0324, C. 46.) According to

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Dennis, the alleged fraud centered on the State's use of the Brandyburg letter, claiming that the State "knowingly misrepresented" the statement in which "[Brandyburg] recalls all attorneys being present during the ex parte jury misconduct instruction" because, Dennis asserts, the statement "was referring only to all attorneys representing the State" being present--not Dennis's counsel. (Record in CR-13-0324, C. 46.) The circuit court rejected both claims. Dennis appealed, and this Court again affirmed the circuit court, holding as follows in its unpublished memorandum:

"Dennis's claim that the trial court was without jurisdiction to render judgment or impose his sentences because he was denied his Sixth Amendment right to counsel during alleged ex parte jury instructions given by the trial court is procedurally barred by Rule 32.2(b), Ala. R. Crim. P., because this petition is successive and this claim, or a variant thereof, has been raised and addressed in previous petitions. See Dennis v. State, (CR-01-1480) 868 So. 2d 488 (Ala. Crim. App. 2002) (table); Dennis v. State, (CR-02-0855) 880 So. 2d 513 (Ala. Crim. App. 2003) (table); Dennis v. State, (CR-05-2105) 4 So. 3d 588 (Ala. Crim. App. 2007) (table); Dennis v. State, (CR-09-0419) 77 So. 3d 629 (Ala. Crim. App. 2010) (table). Dennis argues, though, that this claim is not successive because it is a jurisdictional claim that has not been addressed on the merits. Contrary to Dennis's assertion, this claim has been addressed on its merits. See Dennis, (CR-01-1480) 868 So. 2d 488 ('Although dismissed by the trial court as non-jurisdictional, the court also noted that this

claim [that Dennis was denied counsel] was without merit because all lawyers were present at the time this incident occurred. Thus, no basis for relief exists as to this claim.' (Emphasis added).

"To the extent Dennis asserts a claim that previous denials of his Sixth Amendment claim by the circuit court have been based on a fraud perpetrated by the State, this claim is without merit. As this Court held in a memorandum opinion affirming the circuit court's dismissal of Dennis's fourth Rule 32 petition, 'the proper avenue for challenging a circuit court's ruling on a Rule 32 petition is by appealing to this Court (which Dennis did), not by filing a subsequent Rule 32 petition. Therefore, because this claim is meritless, summary denial was proper.' Dennis, (CR-05-2105) 4 So. 3d 588 (table)."

Dennis v. State (No. CR-13-0324, Mar. 7, 2014), 177 So. 3d 1204 (Ala. Crim. App. 2014) (table).

On May 26, 2015, Dennis filed his seventh Rule 32 petition. In that petition, Dennis again raised his denial-of-counsel claim. (C. 66.) As it had done before, the circuit court summarily dismissed Dennis's claim as successive under Rule 32.2(b) and found that claim to be meritless. (C. 67.) But unlike the previous times it had dismissed Dennis's denial-of-counsel claim, the circuit court issued a second order addressing Dennis's seventh Rule 32 petition and Dennis's penchant for filing petitions raising a claim that has been consistently rejected by the circuit court. (C. 120-

21.) In that second order, the circuit court, relying on Ex parte Thompson, 38 So. 3d 119 (Ala. Crim. App. 2009), enjoined Dennis from relitigating both his denial-of-counsel claim and any other claim arising from the circumstances surrounding the trial court's removal of a newspaper from the jury-deliberation room. The circuit court explained:

"The Court has carefully reviewed this the seventh Rule 32 petition filed by Mr. Dennis and the previous six petitions and the orders entered by the trial court and the appellate courts. Everything in the seventh petition has been argued and rejected by the trial court and the appellate courts time and time again. The Court summarily dismissed this petition because no purpose would be served by any further proceedings.

"In Ex parte Thompson, 38 So. 3d 119 (Ala. Crim. App. 2009), the Court of Criminal Appeals examined the possible sanctions that could be imposed by a court when dealing with petitioners who have used the judicial system in an abusive and unproductive manner by bombarding the courts with a barrage of repetitive filings:

"Moreover, in Peoples v. State, 531 So. 2d 323 (Ala. Crim. App. 1988), this Court, quoting the United States Court of Appeals for the Eleventh Circuit in Procup v. Strickland, 792 F.2d 1069, 1072-73 (11th Cir. 1986, cited with approval the sanctions a court may legally impose when faced with litigious and prolific pro se litigants:

"Courts have an 'inherent power ... to regulate the

activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.' Cotner v. Hopkins, 795 F.2d 900, 902 (10th Cir. 1986). While those conditions may be 'onerous,' they 'cannot be so burdensome, however, as to deny a litigant meaningful access to the courts.' Cotner, 795 F.2d at 902.

""'In devising methods to attain the objective of curtailing the activity of such a prisoner, however, the courts must carefully observe the fine line between legitimate restraints and an impermissible restriction on a prisoner's constitutional right of access to the courts. Various courts have employed and approved a variety of injunctive devices.'""

Ex parte Thompson, 38 So. 3d at 124-25. See also Randal S. Jeffrey, Restricting Prisoners' Equal Access to the Federal Courts: The Three Strikes Provision of the Prison Litigation Reform Act and Substantive Equal Protection, 49 Buffalo L. Rev. 1099, 1141 (2001).

"After reviewing the permissible injunctive devices, the Court orders:

"(1) that Defendant Dennis is enjoined from relitigating the specific claims or claims arising from the same set of factual circumstances as set forth in the seventh Rule 32 petition; and

"(2) that Defendant Dennis must seek leave of court before filing pleadings in any new or pending

lawsuit. Such a motion must be accompanied with an affidavit certifying that the claims being raised are novel and Defendant Dennis will [be] subject to contempt for false swearing."

(C. 120-21.) Dennis did not appeal either the circuit court's decision to summarily dismiss his seventh petition or its decision to enjoin him from filing further petitions raising his denial-of-counsel claim.

On April 21, 2017, without first seeking leave from the circuit court, Dennis filed the instant petition, his eighth. (C. 46-49.) In his eighth petition, Dennis again alleged that the trial court denied him his Sixth Amendment right to counsel when it "was advised by a prosecutor that jurors were in possession of a Mobile Press newspaper," it confiscated that newspaper from them, and it gave them "off-the-record juror misconduct instructions" when his counsel was not present. In raising this claim, Dennis acknowledged that he had previously raised this precise claim in his second Rule 32 petition, but alleged that, in dismissing his second petition, the circuit court did so "without an evidentiary hearing" and by relying solely on the Brandyburg letter. According to Dennis, the Brandyburg letter was "hearsay," which "is not legal evidence in a Rule 32 proceeding"; thus, he says, it is

"not evidence proving [his] claim is successive." (C. 48.)

On October 16, 2017, the State moved to dismiss Dennis's petition. The State argued, among other things, that Dennis had "failed to seek leave of court before filing this petition and he attempts to litigate the issue he has been enjoined from raising." (C. 62.) Then, on October 24, 2017, the circuit court issued a detailed order summarily dismissing Dennis's eighth petition. (C. 89-92.) Among the many reasons the circuit court gave to support its decision, the circuit court also explained:

"[T]his petition was filed in direct violation of this court's order dismissing [Dennis's] previous Rule 32 petition.

"Pursuant to Peoples v. State, 531 So. 2d 323 (Ala. Crim. App. 1988), this Court also enjoins [Dennis] from relitigating any claim regarding the removal of the newspaper from the jury room and/or claims arising from any set of similar facts or circumstances. [Dennis] must also seek leave of court before filing new petitions for post conviction relief to ensure any such claims are not precluded or are without merit. In seeking such leave, [Dennis] must show that the claims he seeks to raise were not or could not have been ascertained through reasonable diligence, are newly discovered, and/or affect the Court's jurisdiction.'

"State's Exhibit 1. As [Dennis] failed to seek leave of court before filing this petition and he attempts to litigate the issue he has been enjoined from raising, the petition is due to be dismissed."

(C. 91.)

On November 16, 2017, Dennis filed a "Motion to Alter, Amend, or Vacate Judgment and Request for Evidentiary Hearing." (C. 93-100.) The circuit court denied Dennis's motion on December 3, 2017. (C. 125.) This appeal follows.

Discussion

On appeal, Dennis argues that the circuit court erred when it summarily dismissed his denial-of-counsel claim as being filed in violation of its previous order enjoining him from relitigating that claim because that finding "is ... in conflict with the successive petition law of Ex parte Walker, 800 So. 2d 135 (Ala. 2000), and the facts in the record revealing Attorney James M. Byrd filed the current petition (with leave of court)." (Dennis's brief, p. 4.) According to Dennis, under Walker, he "is allowed to pursue his claim," regardless of the circuit court's order enjoining him from relitigating it, "pursuant to Rule 32 because the issue has not been previously addressed on its merits." (Dennis's brief, p. 15.) We disagree.

This Court has long held that circuit courts possess the inherent power to limit the ability of abusive litigants to file a stream of frivolous postconviction petitions. See McConico v. State, 84 So. 3d 159, 162-63 (Ala. Crim. App. 2011); Ex parte Thompson, 38 So. 3d 119, 124-25 (Ala. Crim. App. 2009); and Peoples v. State, 531 So. 2d 323, 326-27 (Ala. Crim. App. 1988). This Court has also provided circuit courts with a nonexhaustive list of sanctions they may impose on abusive litigants to exercise that power. See McConico, supra; Thompson, supra; and Peoples, supra. For example, this Court has suggested that circuit courts curtail filings from abusive litigants by:

- (1) "[E]njoin[ing] prisoner litigants from relitigating specific claims or claims arising from the same set of factual circumstances."
- (2) "[R]equir[ing] litigants to accompany all future pleadings with affidavits certifying that the claims being raised are novel, subject to contempt for false swearing."
- (3) "[D]irect[ing] the litigant to attach to future complaints a list of all cases previously filed involving the same, similar, or related cause of action, and to send an extra copy of each pleading filed to the law clerk of the chief judge of the district."

- (4) ""[D]irect[ing] the litigant to seek leave of court before filing pleadings in any new or pending lawsuit.""
- (5) ""[P]ermitt[ing] abusive prisoner litigants to file in forma pauperis only claims alleging actual or threatened physical harm; and requiring payment of a filing fee to bring other claims.""
- (6) ""[L]imit[ing] the number of filings by a particular inmate.""
- (7) ""[E]nter[ing] injunctions prohibiting the abusive prisoner from acting as a writ writer or jailhouse lawyer for other inmates.""
- (8) ""[L]imit[ing] ... the number of pages to a complaint and other pleadings.""
- (9) ""[R]equiring a plaintiff to file an affidavit setting forth what attempts he has made to obtain an attorney to represent him.""
- (10) ""[L]imit[ing] ... further pleadings without order of court, after the complaint has been filed.""

Thompson, 38 So. 3d at 125 (quoting Peoples, 531 So. 2d at 326-27, quoting in turn Procup v. Strickland, 792 F.2d 1069, 1072-73 (11th Cir. 1986)). The only limitation this Court has placed on a circuit court's power to impose one (or more) of those sanctions is that the court must ensure that whichever sanction or sanctions it imposes are "carefully tailored," so

that, although accessing the court is more difficult, it is not "so burdensome ... as to deny a litigant meaningful access to the courts." 38 So. 3d at 125 (quotation marks omitted).

Here, at the time the circuit court decided to sanction Dennis and to limit his ability to relitigate his denial-of-counsel claim and any other claim arising from the same set of facts, Dennis had already filed six earlier postconviction petitions raising that same allegation. Each time Dennis raised this claim, the circuit court denied him postconviction relief and this Court affirmed the circuit court's decisions. When Dennis filed his seventh petition raising the same claim, the circuit court again summarily disposed of Dennis's claim and sanctioned him in two ways.³ First, it enjoined Dennis from relitigating his denial-of-counsel claim or any other

³Although the circuit court waited until Dennis filed his seventh Rule 32 petition raising the same claim before it imposed sanctions on him, this Court is not suggesting that circuit courts have to wait until a petitioner has filed seven petitions before choosing to impose sanctions on an abusive litigant. Rather, because the power to impose sanctions is an inherent power that lies with the circuit court, those courts are left to decide when a Rule 32 petitioner crosses the line from litigious to abusive. See, e.g., Peoples, 531 So. 2d at 326 (recognizing that "'[l]itigiousness alone will not support an injection against a plaintiff, ... and ... the use of such measures against a pro se plaintiff should be approached with caution'") (quoting Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980)).

claims arising from the same set of factual circumstances. (C. 120-21.) Second, it ordered that Dennis seek leave of the court before filing any pleadings in any new or pending lawsuit and that his motion for leave must be accompanied by an affidavit certifying that the claims he wants to raise are novel. (C. 120-21.) Both sanctions, under the circumstances set out above, are appropriate, and neither sanction (individually or cumulatively) denies Dennis meaningful access to the circuit court.

Of course, Dennis neither contests the circuit court's authority to sanction him nor contends that the sanctions imposed denied him meaningful access to the circuit court. Instead, Dennis argues that the circuit court could not rely on the sanctions it imposed on him as a basis for summarily dismissing his petition because, he says, his claim is not successive under Rule 32.2(b), Ala. R. Crim. P., and because his eighth petition was filed by counsel, who, he says had leave of court to file it. Dennis is incorrect.

Starting with Dennis's claim that the circuit court could not rely on the sanctions as a basis for summarily dismissing his petition because, he says, his counsel had leave of court

to file his eighth Rule 32 petition, that claim is not supported by the record. Indeed, although the circuit court ordered Dennis to "seek leave of court before filing pleadings in any new or pending lawsuit" (C. 121), the record in this case does not include any such motion from either Dennis or his counsel. The circuit court confirmed that no such motion exists in its order summarily dismissing Dennis's petition, finding that Dennis did not have leave of court to file his petition. (See C. 91 (finding that Dennis "failed to seek leave of court before filing this petition").) Moreover, to the extent that Dennis suggests that he did not have to seek leave of court because his petition was signed and filed by counsel, that argument misunderstands the breadth of the circuit court's injunction. As set out above, the circuit court enjoined Dennis from ever relitigating his denial-of-counsel claim (or any claim arising from the facts underlying that claim), and did not include an exception for subsequent petitions signed and filed by counsel.

Turning to Dennis's argument that the circuit court could not rely on the sanctions it imposed on him as a reason to dismiss his petition because, he says, his denial-of-counsel

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claim is not successive under Rule 32.2(b), that claim fails for two reasons.

First, Dennis's claim is premised on his erroneous assertion that his denial-of-counsel claim is not successive under Rule 32.2(b). As noted above, this Court has held otherwise. As this Court explained in its unpublished memorandum affirming the circuit court's summary dismissal of Dennis's third Rule 32 petition:

"[Dennis] argues that he was denied counsel during a critical stage of his trial. Specifically, he contends that, during the jury's deliberations and outside the presence of his counsel, the trial court entered the jury deliberation room and removed a newspaper that contained an article about the trial. This Court addressed the merits of and rejected the same or a similar claim on appeal from the dismissal of [Dennis's] second Rule 32 petition. Therefore, that claim is precluded as successive. See Rule 32.2(b), Ala. R. Crim. P."

(Emphasis added.) Dennis v. State (No. CR-02-0855, Apr. 18, 2003), 880 So. 2d 513 (Ala. Crim. App. 2003) (table). In other words, although Dennis continues to argue that his denial-of-counsel claim has not been adjudicated on the merits (and thus is not successive), this Court rejected that precise claim over 16 years ago, and "''"all questions of law which have been decided by the highest appellate court become the

law of the case which must be followed in subsequent proceedings, both in the lower and the appellate courts.'""⁴ Arthur v. State, 238 So. 3d 1276, 1278 (Ala. Crim. App. 2017) (quoting Ex parte Woodward, 883 So. 2d 256, 258 (Ala. Crim. App. 2003), quoting in turn State v. Owen, 696 So. 2d 715, 720 (Fla. 1997)).

Second, even if Dennis's claim had not been previously decided on the merits, Dennis's argument overlooks the fact that circuit courts may summarily dismiss Rule 32 petitions for various reasons--not just the reasons listed in Rule 32.2, Ala. R. Crim. P. Indeed, Rule 32.7(d), Ala. R. Crim. P., provides that a circuit court may summarily dismiss a Rule 32 petition 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." Although Dennis seems to suggest that a petition (or claim) that survives the grounds of preclusion set out in Rule 32.2

⁴Dennis did not seek certiorari review of this Court's decision to affirm the circuit court's summary dismissal of Dennis's third Rule 32 petition.

cannot be summarily dismissed for the other reasons listed in Rule 32.7(d), that is not the case. In fact, this Court has affirmed the summary dismissal of numerous Rule 32 petitions that were not precluded under Rule 32.2 but that failed to satisfy Rule 32.7(d), Ala. R. Crim. P., in some other way. For example, this Court has affirmed the summary dismissal of Rule 32 petitions that are meritless, see Saunders v. State, 249 So. 3d 1153, 1159 (Ala. Crim. App. 2016), that are insufficiently pleaded, see Carruth v. State, 165 So. 3d 627, 640 (Ala. Crim. App. 2014), and that simply fail to state a claim for relief, see McLaurin v. State, 895 So. 2d 1010, 1012 (Ala. Crim. App. 2004). In other words, a Rule 32 petition (or claim) that survives one of the grounds for summary dismissal under Rule 32.7(d) does not do so to the exclusion of the other grounds for summary dismissal under that rule. See generally Jackson v. State, 127 So. 3d 1251, 1256 (Ala. Crim. App. 2010) ("Because Jackson has failed to challenge one of the circuit court's alternative holdings, he has waived review of this issue.").

Here, even if Dennis's denial-of-counsel claim was not successive under Rule 32.2(b), the circuit court still have

properly summarily dismissed Dennis's petition under Rule 32.7(d), Ala. R. Crim. P., because "no purpose would be served by any further proceedings" in this case. As the circuit court explained in its order enjoining Dennis from relitigating his denial-of-counsel claim:

"The Court has carefully reviewed this the seventh Rule 32 petition filed by Mr. Dennis and the previous six petitions and the orders entered by the trial court and the appellate courts. Everything in the seventh petition has been argued and rejected by the trial court and appellate courts time and time again. The Court summarily dismisses this petition because no purpose would be served by any further proceedings."

(C. 120.) Dennis's attempt to relitigate his denial-of-counsel claim in his eighth Rule 32 petition was likewise futile, and the circuit court did not err when it found that Dennis's eighth petition was due to be dismissed because it was filed in violation of the circuit court's injunction and because "no purpose would be served by further proceedings."

(C. 91-92.)

Additionally, we note that, although the circuit court in this case waited to enforce its sanctions against Dennis and to summarily dismiss Dennis's petition under Rule 32.7 until after Dennis's eighth petition was filed with the circuit

court,⁵ circuit courts that impose sanctions on abusive litigants do not have to wait to enforce those sanctions. In fact, this Court upheld a circuit court's decision to order a circuit clerk to return to a petitioner both his Rule 32 petition and his filing fee because the petition was filed in violation of that court's previous order directing the circuit court to not accept any filings from that petitioner until he had satisfied three conditions: (1) pay in full all court costs associated with his previous cases; (2) pay the filing fee for his new Rule 32 petition; and (3) raise a cognizable jurisdictional claim. See Ex parte Thompson, 38 So. 3d 119, 121 (Ala. Crim. App. 2009).

In sum, circuit courts may not only impose sanctions against abusive litigants, they may also enforce those sanctions either by directing the circuit clerk to return to the petitioner any subsequent petition filed in violation of

⁵Frankly, this Court can see the wisdom of doing so because doing so puts the circuit court in a position where it has jurisdiction over the petition, see Whitson v. State, 891 So. 2d 421, 422 (Ala. Crim. App. 2004) (recognizing that circuit courts do not obtain jurisdiction over a Rule 32 petition until the payment of a filing fee or the grant of a request to proceed in forma pauperis), where it can ensure the petition truly violates its injunction, and where it can still dispose of the petition without wasting scarce judicial resources.

the court's sanction or summarily dismissing that subsequent petition under Rule 32.7(d), Ala. R. Crim. P. To hold otherwise would render meaningless the circuit court's "inherent power" to limit the ability of abusive litigants from filing a stream of postconviction petitions.

Thus, the circuit court in this case properly dismissed Dennis's petition as being filed in violation of its previous order enjoining him from reasserting his denial-of-counsel claim or any other claim arising out of that same set of facts.

Because the circuit court enjoined Dennis from relitigating his denial-of-counsel claim or any other claim arising from the same set of facts, and because the circuit court properly dismissed Dennis's petition filed in violation of that injunction, we need not address Dennis's remaining claims regarding the circuit court's decision to summarily dismiss his petition.⁶ However, we must address one other

⁶In Issues I and II in his brief on appeal, Dennis argues that the circuit court erred when it summarily dismissed his petition by relying on inadmissible hearsay evidence--i.e., the Brandyburg letter--to find his petition successive under Rule 32.2(b). Because we hold that the circuit court properly dismissed Dennis's petition as being filed in violation of its order enjoining him from relitigating his denial-of-counsel claim, however, it is unnecessary for this Court to address

claim Dennis raises on appeal--namely, his claim that the circuit court's order violates "the doctrine of separation of powers" because, he says, it is "based on [a] wholesale adoption of the State's misleading factual and legal arguments." (Dennis's brief, p. 38.) This claim is without merit.

"Alabama courts have consistently held that even when a trial court adopts verbatim a party's proposed order, the findings of fact and conclusions of law are those of the trial court and they may be reversed only if they are clearly erroneous.' McGahee v. State, 885 So. 2d 191, 229-30 (Ala. Crim. App. 2003). 'While the practice of adopting the state's proposed findings and conclusions is subject to criticism, the general rule is that even when the court adopts proposed findings verbatim, the findings are those of the court and may be reversed only if clearly erroneous.' Bell v. State, 593 So. 2d 123, 126 (Ala. Crim. App. 1991). '[T]he general rule is that, where a trial court does in fact adopt the proposed order as its own, deference is owed to that order in the same measure as any other order of the trial court.' Ex parte Ingram, 51 So. 3d 1119, 1122 (Ala. 2010). Only 'when the record before this Court clearly establishes that the order signed by the trial court denying postconviction relief is not the product of the trial court's independent judgment' will the circuit court's adoption of the

those remaining claims. Even so, as we have previously held and as we explain above, Dennis's denial-of-counsel claim has been previously adjudicated on the merits and is successive under Rule 32.2(b). Thus, the circuit court did not err when it found as much in its order dismissing Dennis's eighth Rule 32 petition.

State's proposed order be held erroneous. Ex parte Jenkins, 105 So. 3d 1250, 1260 (Ala. 2012).

Reeves v. State, 226 So. 3d 711, 723-24 (Ala. Crim. App. 2016).

Here, nothing in the record on appeal indicates that the circuit court's order summarily dismissing Dennis's eighth Rule 32 petition "was not a product of the court's own independent judgment." Reeves, 226 So. 3d at 724. And, as explained above, the circuit court correctly dismissed Dennis's denial-of-counsel claim; thus, we cannot conclude that the circuit court's "findings of fact and conclusions of law ... are clearly erroneous." McGahee v. State, 885 So. 2d 191, 229-30 (Ala. Crim. App. 2003). In sum, Dennis's separation-of-powers claim does not entitle him to any relief.

Conclusion

Because the circuit court properly dismissed Dennis's eighth Rule 32 petition as being filed in violation of its injunction barring him from relitigating his denial-of-counsel claim, the judgment of the circuit court is affirmed.

AFFIRMED.

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