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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2020-2021

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CR-19-0524

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Jeremy Leshun Williams

v.

State of Alabama

Appeal from Lauderdale Circuit Court  
(CC-14-698.61)

PER CURIAM.

Jeremy Leshun Williams appeals the circuit court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P.

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In 2015, Williams was convicted of murder and was sentenced to life imprisonment. This Court affirmed Williams's conviction and sentence on direct appeal in an unpublished memorandum issued on February 3, 2017. Williams v. State (No. CR-15-0494), 242 So. 3d 218 (Ala. Crim. App. 2017) (table). The Alabama Supreme Court denied certiorari review, and this Court issued a certificate of judgment on April 14, 2017. In December 2017, Williams filed his first Rule 32 petition challenging his conviction and sentence. After conducting an evidentiary hearing, the circuit court denied the petition in January 2019. Williams filed an untimely notice of appeal in April 2019, and this Court dismissed the appeal by order in May 2019, subsequently issuing a certificate of judgment in July 2019 (case no. CR-18-0748).

On May 28, 2019, Williams filed the instant petition, his second. In his petition, Williams raised the same claims he had raised in his first petition -- that he was actually innocent; that his trial and appellate counsel had been ineffective; that juror misconduct had occurred; and that the trial court had committed numerous errors during his trial.

In addition, Williams requested an out-of-time appeal from the denial of his first Rule 32 petition on the ground that his failure to timely appeal was through no fault of his own. On January 28, 2020, the State filed a motion for summary dismissal of Williams's petition, arguing that Williams's claims were precluded by Rules 32.2(a)(2), (a)(4), and/or (b), Ala. R. Crim. P.; that they were time-barred by Rule 32.2(c), Ala. R. Crim. P.; that they were not sufficiently pleaded; and/or that they were meritless. Williams filed a reply to the State's motion on February 6, 2020, and on February 13, 2020, the circuit court granted the State's motion. On February 24, 2020, Williams filed a postjudgment motion to alter, amend, or vacate the circuit court's judgment, which the circuit court denied on March 11, 2020. Williams timely filed a notice of appeal on March 2, 2020.

On appeal, Williams reasserts each of the claims he raised in his petition.<sup>1</sup> Williams's claims of actual

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<sup>1</sup>Williams also raises additional claims in his brief on appeal that were not included in his petition. However, it is well settled that "[a]n appellant cannot raise an issue on appeal from the denial of a Rule 32 petition which was not raised in the Rule 32 petition." Arrington v. State, 716 So. 2d 237, 239 (Ala. Crim. App. 1997). Therefore, we do not address the claims that were not included in his petition. We also note that Williams takes issue in his brief with this

innocence, ineffective assistance of counsel, juror misconduct, and trial-court error are, as the State asserted in its response, precluded as successive by Rule 32.2(b) because they were raised in Williams's first petition. As for his claim that his failure to timely appeal the denial of his first Rule 32 petition was through no fault of his own, the State agrees that Williams is entitled to an opportunity to prove that claim. The claim is not precluded by any of the provisions in Rule 32.2, is sufficiently pleaded, and, if true, may entitle Williams to relief. See, e.g., Ford v. State, 831 So. 2d 641, 644 (Ala. Crim. App. 2001) ("Once a petitioner has met his burden of pleading so as to avoid summary disposition pursuant to Rule 32.7(d), Ala. R. Crim. P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof.").

Therefore, we remand this cause for the circuit court to allow Williams an opportunity to present evidence to support his claim that his failure to appeal the denial of his first

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Court's sua sponte extending the time for the record to be filed in this appeal. However, after this Court's order extending the time for the record to be filed, Williams filed multiple motions and objections, all of which this Court denied. We decline to revisit that issue.

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Rule 32 petition was through no fault of his own. The court shall either conduct an evidentiary hearing or accept evidence in the form of affidavits, written interrogatories, or depositions. See Rule 32.9(a), Ala. R. Crim. P. After receiving and considering the evidence presented, the circuit court shall issue specific written findings of fact regarding Williams's claim and may grant Williams appropriate relief if necessary. Due return shall be filed within 63 days of the date of this opinion, and shall include the circuit court's written findings of fact, a transcript of the evidentiary hearing, if one is conducted, and any other evidence received and/or relied on by the court in making its findings.

REMANDED WITH INSTRUCTIONS.

McCool and Cole, JJ., concur. Minor, J., concurs in the result. Windom, P.J., dissents. Kellum, J., dissents, with opinion.

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KELLUM, Judge, dissenting.

In his Rule 32, Ala. R. Crim. P., petition for postconviction, relief, Jeremy Leshun Williams challenged his 2015 conviction and sentence for murder and requested an out-of-time appeal from the 2019 summary dismissal of his previous Rule 32 petition on the ground that his failure to appeal that judgment was through no fault of his own.

Rule 32.1(f), Ala. R. Crim. P., provides that "[a] petition that challenges multiple judgments entered in more than a single trial or guilty-plea proceeding shall be dismissed without prejudice." I recognize that, in Giles v. State, 250 So. 3d 611 (Ala. Crim. App. 2017), a majority of this Court held that a Rule 32 petitioner may, in a single petition, challenge a judgment entered in one proceeding and seek an out-of-time appeal from a judgment entered in a separate proceeding. In doing so, this Court quoted the following from this Court's opinion in Banville v. State, 255 So. 3d 792 (Ala. Crim. App. 2017):

"The relief sought by a petitioner pursuant to Rule 32.1(f) seeking an out-of-time appeal differs completely from the relief from a conviction and sentence, or an illegal sentence, that a petitioner would seek under Rules 32.1(a) through 32.1(e). A petition seeking relief under

Rule 32.1(f) does not challenge the underlying conviction or sentence. It only formally requests the trial court to find that the petitioner had failed to file an appeal from a conviction and sentence, or a previous Rule 32 petition, because the petitioner had failed to perfect an appeal through no fault of his own."<sup>2</sup>

Giles, 250 So. 3d at 613-14 (quoting Banville, 255 So. 3d 792 at 795-96). This Court then concluded that because "a claim under Rule 32.1(f) -- as one that 'differs completely from the relief ... that a petitioner would seek under Rules 32.1(a) through 32.1(e),' Banville, [255] So. 3d at [795] -- may properly be construed as an alternative ground for relief when accompanied by additional claims under Rules 32.1(a) through 32.1(e)," a Rule 32 petitioner may, in a single petition, challenge one judgment and seek an out-of-time appeal from a separate judgment. Giles, 250 So. 3d at 614.

I dissented in Giles, explaining:

"Although the path taken by the Court in this case appears to comply with the letter of Rule 32.1(f), which provides that '[a] petition that

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<sup>2</sup>I concurred in the result only in Banville, in part, because I did not necessarily agree with this language. I point out that a request for relief under Rule 32.1(d) also "does not challenge the underlying conviction or sentence," yet this Court lumped Rule 32.1(d) together with Rules 32.1(a), (b), (c), and (e) and chose to differentiate only Rule 32.1(f).

challenges multiple judgments entered in more than a single trial or guilty-plea proceeding shall be dismissed without prejudice,' at least when read in light of the statement in Banville v. State, [255] So. 3d [792], [795] (Ala. Crim. App. 2017), that a request for an out-of-time appeal is not a challenge to a judgment, I do not believe that it complies with the spirit of the law. The spirit of the prohibition in Rule 32.1(f) is to prevent a Rule 32 petitioner from raising claims in a single petition that relate to separate proceedings, as was done in this case. Allowing Rule 32 petitioners to raise claims in a single Rule 32 petition that relate to separate proceedings might lead to confusion, could result in a waste of scarce judicial resources, and will allow petitioners to avoid filing fees they otherwise would have been required to pay."

Giles, 250 So. 3d at 615 (footnote omitted) (Kellum, J., dissenting). I adhere to my dissent in Giles. In my view, the second sentence in Rule 32.1(f) prohibits a Rule 32 petitioner from filing a single petition challenging a judgment entered in one proceeding and seeking an out-of-time appeal from a judgment entered in a separate proceeding. Of course, a Rule 32 petitioner who, in a single petition, both challenges a judgment and seeks an out-of-time appeal from that same judgment would not run afoul of the second sentence in Rule 32.1(f). However, in this case, Williams challenged the judgment entered in one proceeding (his 2015 conviction and sentence) and also sought an out-of-time appeal from the



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judgment entered in a separate proceeding (the 2019 dismissal of his previous Rule 32 petition).

I believe Giles should be overruled, the circuit court's judgment in this case reversed, and this cause remanded for the circuit court to dismiss Williams's petition without prejudice. Therefore, I respectfully dissent.