

REL: October 16, 2020

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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2020-2021

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CR-19-0689

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William Dale Watson

v.

State of Alabama

Appeal from Limestone Circuit Court  
(CC-13-57.61)

On Return to Remand

MINOR, Judge.

This appeal requires a straightforward application of this Court's decision in Giles v. State, 250 So. 3d 611 (Ala. Crim. App. 2017). Under Giles, when a petitioner files a Rule 32, Ala. R. Crim. P., petition that includes a claim seeking an out-of-time appeal as well as claims challenging the petitioner's original conviction and sentence, the trial court

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should first address the claim seeking an out-of-time appeal. 250 So. 3d at 612-13. If the petitioner pleads and proves his claim seeking an out-of-time appeal, the trial court should grant relief on that claim and hold the remaining claims in abeyance pending the outcome of the out-of-time appeal. 250 So. 3d at 614.

A jury convicted William Dale Watson, the petitioner, in 2017 of six counts of sexual abuse of a child less than 12 years old, see § 13A-6-69.1, Ala. Code 1975, and four counts of second-degree sexual abuse, see § 13A-6-69.1, Ala. Code 1975. For the convictions for sexual abuse of a child less than 12 years old, the Limestone Circuit Court sentenced Watson to 20 years' imprisonment on 5 of the convictions and to 15 years' imprisonment on the other conviction. The circuit court sentenced Watson to one year's imprisonment on each of the second-degree-sexual-abuse convictions. The circuit court ordered Watson to serve all sentences concurrently. This Court, in an unpublished memorandum, affirmed Watson's convictions and sentences. Watson v. State (No. CR-17-0384), 279 So. 3d 40 (Ala. Crim. App. 2018) (table).

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Watson filed a Rule 32 petition in 2019 challenging his convictions and sentences, which the circuit court summarily dismissed. This Court, by order, dismissed as untimely Watson's appeal of that judgment. Watson v. State (No. CR-19-0037, Oct. 22, 2019).

Watson filed the underlying Rule 32 petition on January 6, 2020. Watson again challenged his convictions and sentences. Watson also sought, under Rule 32.1(f), Ala. R. Crim. P., an out-of-time appeal of the judgment summarily dismissing his first Rule 32 petition. The circuit court summarily dismissed the petition, and Watson timely appealed.

In seeking an out-of-time appeal under Rule 32.1(f), Watson alleged that the failure to timely appeal the judgment denying his first Rule 32 petition was his counsel's fault and not Watson's. (C. 16.) In its response, the State did not refute this claim, but the circuit court did not address the claim in its order dismissing the petition. (C. 42, 47.)

On original submission, the State asked this Court to remand this matter under Giles for the circuit court to address Watson's claim seeking an out-of-time appeal of the judgment dismissing his first Rule 32 petition. (State's

brief, p. 18.) This Court complied with the State's request, and on September 3, 2020, remanded this case by order.

The record on return to remand shows that the circuit court gave Watson a chance to prove his out-of-time-appeal claim. Watson submitted an affidavit from the attorney who had represented Watson in the appeal of the first Rule 32 petition. (Record on Return to Remand, C. 7.) Because that affidavit showed that Watson's failure to timely appeal his first Rule 32 petition was the fault of Watson's attorney, the circuit court granted Watson's request for an out-of-time appeal under Rule 32.1(f), Ala. R. Crim. P. (Record on Return to Remand, C. 9.)

Thus, like the appellant in Giles,

"[Watson] has been granted relief on his claim under Rule 32.1(f) for an out-of-time appeal of the dismissal of his first Rule 32 petition. As a result, [Watson's] first Rule 32 proceedings have been reopened, and he has been permitted to file an appeal of those proceedings. See Waters v. State, 155 So. 3d 311, 316 (Ala. Crim. App. 2013) ('Rule 32 ... authorizes the circuit court to, in essence, reopen the proceedings that led to the petitioner's conviction and sentence if the petitioner demonstrates he is entitled to relief. Our caselaw illustrates that when a Rule 32 petitioner obtains relief, the proceedings are reopened at the point necessary for the circuit court to address the particular problem in that case.')."

"Because the first Rule 32 proceedings have been reopened as a result of [Watson's] obtaining an out-of-time appeal of the dismissal of his first Rule 32 petition, the circuit court should hold in abeyance the remaining claims in [Watson's] second Rule 32 petition pending the outcome of the appeal of his first Rule 32 petition. Cf. Ex parte Bogan, 814 So. 2d 305, 305-06 (Ala. Crim. App. 2001) ('The circuit court had no jurisdiction to dismiss the [petitioner's second] petition while the dismissal of [the petitioner's first] petition was pending on direct appeal. See Barnes v. State, 621 So. 2d 329 (Ala. Crim. App. 1992). "'The general rule is that jurisdiction of one case cannot be in two courts at the same time.'" Rogers v. State, 782 So. 2d 847 (Ala. Crim. App. 2000), quoting Ex parte Hargett, 772 So. 2d 481 (Ala. Crim. App. 1999).'). Accordingly, that part of the circuit court's judgment dismissing the claims in the second Rule 32 petition other than the claim seeking an out-of-time appeal is due to be reversed.

"That part of [Watson's] appeal challenging the dismissal of his claim for an out-of-time appeal is dismissed, because [Watson] has obtained relief on that claim."

Giles, 250 So. 3d at 614.

We thus dismiss that part of Watson's appeal challenging the dismissal of his out-of-time-appeal claim. We reverse that part of the circuit court's judgment dismissing the remaining claims in Watson's Rule 32 petition, and we direct that court to hold those claims in abeyance until Watson has a chance to pursue an appeal from the judgment dismissing his first Rule 32 petition.

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APPEAL DISMISSED IN PART; JUDGMENT REVERSED IN PART.

McCool and Cole, JJ., concur. Windom, P.J., dissents.  
Kellum, J., dissents, with opinion.

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KELLUM, Judge, dissenting.

For the reasons stated in my dissent to the September 3, 2020, order remanding this case and in my dissent in Williams v. State, [Ms. CR-19-0524, October 16, 2020] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2020), I respectfully dissent.