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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)

MINOR, Judge.<sup>1</sup>

## On Return to Remand

Jeremy Leshun Williams appeals the Lauderdale Circuit Court's judgment summarily dismissing his petition for postconviction relief

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<sup>1</sup>This case was previously assigned to another member of this Court.

CR-19-0524

under Rule 32, Ala. R. Crim. P.

In November 2015, a jury convicted Williams of murder, see § 13A-6-2, Ala. Code 1975, for killing Brioni Jamaal Rutland in 2014.<sup>2</sup> The circuit court sentenced Williams to life in prison. This Court affirmed Williams's conviction and sentence by unpublished memorandum, Williams v. State (No. CR-15-0494), 242 So. 3d 218 (Ala. Crim. App. 2017) (table), cert. denied, 251 So. 3d 14 (Ala. 2017) (table). This Court issued the certificate of judgment on April 14, 2017.

Williams filed his first Rule 32 petition in December 2017. The circuit court, after an evidentiary hearing, denied the petition in January 2019. This Court, by order, dismissed Williams's appeal of that judgment as untimely (case no. CR-18-0748).

Williams filed this Rule 32 petition, his second, in May 2019. Williams alleged claims challenging his conviction and sentence and a claim seeking an out-of-time appeal from the judgment denying his first

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<sup>2</sup>The grand jury indicted Williams for murder made capital because it was committed in the course of a robbery, see § 13A-5-40(a)(2), Ala. Code 1975. The jury convicted Williams of murder as a lesser-included offense.

CR-19-0524

Rule 32 petition. The circuit court summarily dismissed the second petition, and Williams timely appealed.

On original submission, a plurality of this Court, after stating that Rule 32.2(b), Ala. R. Crim. P., precluded as successive the claims in Williams's second petition that challenged his conviction and sentence, remanded the matter for the circuit court to give Williams a chance to prove his claim seeking an out-of-time appeal. Williams v. State, [Ms. CR-19-0524, Oct. 16, 2020] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2020). The record on return to remand shows that the circuit court granted Williams relief on his out-of-time-appeal claim.

This Court faced a similar case in Giles v. State, 250 So. 3d 611 (Ala. Crim. App. 2017). In Giles, this Court dismissed that part of Giles's appeal seeking an out-of-time appeal of his first Rule 32 petition because he had obtained the relief he requested on that claim. 250 So. 3d at 613. This Court reversed the circuit court's judgment on the remaining claims and told the circuit court to hold those claims in abeyance until completion of an appeal of the judgment denying Giles's first Rule 32 petition. This Court reasoned that the out-of-time appeal of Giles's first Rule 32 petition

CR-19-0524

reopened those proceedings and that the circuit court thus should wait to decide the other claims in the second petition.

Giles controls this case. Because the circuit court granted Williams relief on his out-of-time appeal claim, that part of his appeal is due to be dismissed. As to the remaining claims in Williams's petition, the circuit court's judgment is due to be reversed, and the circuit court should hold those claims in abeyance until completion of any appeal of the judgment denying Williams's first petition.

Although Giles controls this case, this Court's decision on original submission did not follow Giles and, instead, addressed whether the remaining claims in Williams's petition are successive. This Court erred in addressing those claims and should not have undertaken that analysis in our opinion on original submission. As explained below, neither the circuit court nor this Court should decide whether those claims are successive until the first Rule 32 proceedings are completed.

This Court's decision in Giles applied the text of Rule 32 and this Court's decisions interpreting that rule. Rule 32.1(f) allows a petitioner to seek, as an alternative ground for relief, an out-of-time appeal "from the

CR-19-0524

conviction or sentence itself or from the dismissal or denial of a [Rule 32] petition previously filed." Giles held that, if a petitioner in a second or subsequent petition gets an out-of-time appeal of a judgment dismissing a prior petition, the circuit court should not rule on the substantive claims in the second or subsequent petition until the petitioner exhausts his appellate remedies on the prior petition. The Giles Court, citing Waters v. State, 155 So. 3d 311 (Ala. Crim. App. 2013), recognized that the granting of an out-of-time appeal reopened the proceedings in Giles's first Rule 32 petition, thus allowing him to appeal the judgment dismissing his first Rule 32 petition.

To avoid problems of logic and timing in the future, the circuit court needed to wait until the time expired for Giles to pursue an appeal of the first Rule 32 petition or until this Court issued a certificate of judgment in such an appeal. If, for example, Giles obtained a reversal of the judgment dismissing the first petition, he could amend that petition to include more claims—even claims he raised in the second petition. See, e.g., Ex parte Apicella, 87 So. 3d 1150, 1154 (Ala. 2011) (" 'Reversal of a judgment and remanding of the cause restores both the State and the

CR-19-0524

defendant to the condition in which they stood before the judgment was pronounced.' " (quoting Knight v. State, 356 So. 2d 765, 767 (Ala. Crim. App. 1978))). By requiring the circuit court to wait to rule on the second petition, the Giles Court sought to avoid the problem of inconsistent or nonsensical rulings. We reaffirm that approach here.

We note that Judge Kellum, who dissented in Giles and in this Court's application of Giles in Watson v. State, [Ms. CR-19-0689, Oct. 16, 2020] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2020), dissented from this Court's decision on original submission. In her view, this Court should overrule Giles and not allow a petitioner to "fil[e] a single petition challenging a judgment entered in one proceeding [such as the judgment of conviction in the petitioner's original trial] and seeking an out-of-time appeal from a judgment entered in a separate proceeding [such as a judgment of conviction on a previously filed Rule 32 petition]." Williams, \_\_\_ So. 3d at \_\_\_ (Kellum, J., dissenting). That position, however, conflicts with the text of Rule 32 and this Court's decision in Banville v. State, 255 So. 3d 792 (Ala. Crim. App. 2017).

In Banville, this Court held:

"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."

255 So. 3d at 795-96. In a footnote, this Court stated that "a petition seeking an out-of-time appeal pursuant to 32.1(f) does not challenge any judgment." 255 So. 3d at 795 n.2 (emphasis added).

Giles held that "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)." 250 So. 3d at 614

(emphasis added). Although not long-settled precedent, Giles and Banville are the law.<sup>3</sup>

Under Giles, supra, we dismiss that part of Williams's appeal challenging the denial of his claim for an out-of-time appeal, and we reverse the circuit court's judgment as to the remaining claims in

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<sup>3</sup>In her dissenting opinion in Giles, Judge Kellum also cited concerns that the approach in Giles "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 (Kellum, J., dissenting). We are mindful of those concerns, but, unless the Alabama Supreme Court decides to overrule Giles or Banville—either by a judicial decision or by changing the text of Rule 32—this Court must follow them.

We also note that, if a petitioner files a Rule 32 petition while an appeal is pending of a judgment denying his or her earlier petition, this Court already uses an approach like that taken in Giles. When such a case comes to the attention of this Court, we instruct the circuit court to hold the second petition in abeyance until review of the first petition is complete. See Giles, 250 So. 3d at 614 (citing, as authority different from the main proposition in Giles but analogous enough to lend support to it, 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).").



CR-19-0524

Williams's second petition and direct the circuit court to hold those claims in abeyance until Williams has the chance to appeal the judgment dismissing his first Rule 32 petition.

**APPEAL DISMISSED IN PART; JUDGMENT REVERSED IN PART.**

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

CR-19-0524

WINDOM, Presiding Judge, concurring in part and dissenting in part.

I concur in the majority's decision to dismiss part of Williams's appeal; I dissent from the remainder of the majority's opinion.