Rel: October 8, 2021



# Alabama Court of Criminal Appeals

## OCTOBER TERM, 2021-2022

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## CR-20-0182

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**M.S.P.**

**v.**

**State of Alabama**

**Appeal from St. Clair Circuit Court**
**(CC-20-220; CC-20-221; and CC-20-223)**

COLE, Judge.

M.S.P. appeals the St. Clair Circuit Court's denial of his petition for a writ of certiorari, which petition challenged the district court's summary

dismissal of what he styled as a Rule 32, Ala. R. Crim. P., petition for postconviction relief.

Facts and Procedural History

In August 2002, M.S.P. was arrested for three counts of third-degree burglary. Although each offense involved the same victim and the same building, the record reflects that the offenses were committed on three different dates. Because of his age at the time of the offenses, M.S.P. applied for youthful-offender status. On October 30, 2002, the district court granted M.S.P.'s request to be treated as a youthful offender, he "pleaded guilty" as a youthful offender, and the district court adjudicated him as a "youthful offender" based on the underlying offenses of third-degree burglary. (C. 54.) Under the Youthful Offender Act, see § 15-19-6, Ala. Code 1975, the district court sentenced M.S.P. to two years' imprisonment, but it suspended that sentence and placed him on three years' probation. (C. 54.) M.S.P. did not appeal his youthful-offender adjudication or sentence.

On September 21, 2020, M.S.P. filed in the district court what he styled as a Rule 32 petition for postconviction relief. In his petition,

M.S.P. alleged that his youthful-offender adjudications violated principles of double jeopardy because, he said, they arose "out of the exact same incident and at the same time and place"; that he "never signed an Explanation of Rights and Plea of Guilty Form"; and that his counsel was ineffective. (C. 46.)

On September 30, 2020, the State moved to dismiss M.S.P.'s petition. (C. 64-67.) The district court granted the State's motion and dismissed M.S.P.'s petition. (C. 61-63.) M.S.P. then challenged the district court's decision in the circuit court by way of a petition for a writ of certiorari. (C. 3.)

On November 18, 2020, the circuit court entered the following order:

> "This matter having come before this Court on Petitioner's appeal of the denial of his Rule 32 petition by the District Court in 59/DC-02-433, 59/DC-434, and 59/DC-02-435, and the State's Answer and Motion to Dismiss, and for good cause shown this Court, after having conducted a certiorari review of the same, hereby finds that Petitioner is not entitled to the relief requested and cert is hereby DENIED."

(C. 13.) This appeal follows.

Discussion

On appeal, M.S.P. argues that the circuit court erred when it "dismissed [the] appeal ... from the summarily dismissed Rule 32 Petition for Postconviction Relief." (M.S.P.'s brief, p. 1.)

Before we can address M.S.P.'s arguments on appeal, however, we must first answer the threshold question whether a person who has been adjudged a youthful offender may collaterally attack his or her adjudication by way of a Rule 32 petition.

In W.B.S. v. State, 192 So. 3d 417 (Ala. Crim. App. 2015), this Court answered this question as to juveniles who had been adjudicated delinquent. This Court explained:

> " 'In determining the meaning of a statute or a court rule, this Court looks first to the plain meaning of the words as they are written.' Ex parte Ward, 957 So. 2d 449, 452 (Ala. 2006).
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> "The language used in Rule 32.1[, Ala. R. Crim. P.,] is plain and expressly extends 'postconviction' relief to only a 'defendant who has been convicted of a criminal offense.' (Emphasis added.) To conclude that Rule 32 applies to juvenile adjudications, this Court must hold that the phrase 'defendant who has been convicted of a criminal offense,' includes both juveniles -- who are certainly not classified as 'defendants' -- and delinquency adjudications -- which are not criminal convictions, see § 12-15-220(a), Ala. Code 1975.

> " 'Only the Alabama Supreme Court has the authority to promulgate rules and regulate the procedures applicable to criminal proceedings. § 12-2-7(4), Ala. Code 1975; Ala. Const. 1901, § 150. The Alabama Supreme Court in Marshall v. State, 884 So. 2d 900 (Ala. 2003), noted that it has the authority to amend the rules of procedure and stated:
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> > " ' "The Court of Criminal Appeals claimed in Brooks [v. State, 892 So. 2d 969 (Ala. Crim. App. 2002),] that it had 'created a narrow exception to the 42-day rule [in Rule 4(b)(1), Ala. R. App. P.,] in Fountain v. State, 842 So. 2d 719 (Ala. Crim. App. 2000)....' Brooks, 892 So. 2d at 971. The Court of Criminal Appeals may not, however, amend the rules of procedure."
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> " '884 So. 2d at 905 n. 5 (second emphasis added). See also Dutell v. State, 596 So. 2d 624, 625 (Ala. Crim. App. 1991) (stating that, in construing the Alabama Rules of Criminal Procedure promulgated by the Alabama Supreme Court, "this court will attempt to ascertain and to effectuate the intent of the Alabama Supreme Court as set out in the rule" and citing Shelton v. Wright, 439 So. 2d 55 (Ala. 1983)). As an intermediate appellate court, this Court may interpret and apply the existing rules of procedure, but it may not rewrite them.'

"Ankrom v. State, 152 So. 3d 373, 391-92 (Ala. Crim. App. 2011) (Welch, J., dissenting) (some emphasis added).

> "Thus, the plain language of Rule 32.1, Ala. R. Crim. P., does not include juveniles who have been adjudicated delinquent. However, as noted in the dissent 'other options exist through which W.B.S. could seek relief.' 192 So. 3d at 426 (Burke, J., dissenting). For example, nothing precludes a juvenile from challenging counsel's effectiveness in a motion for a new trial, on direct appeal, or by filing a common-law writ. Here, because W.B.S. has lost the opportunity to file a motion for a new trial challenging his counsel's effectiveness, see Rule 1(B), Ala. R. Juv. P., and his adjudications have been affirmed on direct appeal, W.B.S.'s only avenue for challenging his counsel's effectiveness would be through the filing of a common-law writ. Although Rule 32 'displaces all post-trial remedies except post-trial motions under Rule 24[, Ala. R. Crim. P.,] and appeal' and '[a]ny other post-conviction petition seeking relief from a conviction or sentence shall be treated as a proceeding under [Rule 32],' see Rule 32.4, Ala. R. Crim. P., Rule 32 only 'displaces' such postconviction remedies for 'defendant[s] who ha[ve] been convicted of a criminal offense.' In other words, if a juvenile who has been adjudicated delinquent is not permitted to proceed under Rule 32, Ala. R. Crim. P., no common law 'postconviction' remedies are 'displaced.' Thus, Rule 32 does not prohibit W.B.S. from filing a common-law writ challenging his adjudication."

W.B.S., 192 So. 3d at 419-20 (footnote omitted). This Court's rationale and holding in W.B.S. as to juveniles applies equally to youthful offenders.

Indeed, as is the case with juveniles, an individual who is "adjudged a youthful offender" has not been convicted of a crime. See § 15-19-7(a), Ala. Code 1975 (providing that adjudging someone a youthful offender

"shall not be deemed a conviction of a crime"). So to hold that a person who has been adjudged a youthful offender falls within the scope of Rule 32 would require this Court to read words into the text of Rule 32.1 that are simply not there. That is, this Court would have to read the phrase "defendant who has been convicted of a criminal offense" in Rule 32.1 as including both a youthful offender -- who is not a defendant -- and a youthful-offender adjudication -- which is not a conviction of a criminal offense. In other words, to hold that the scope of "Rule 32 extends to [people who have been granted youthful-offender status] who have been [adjudged a youthful offender], this Court would have to stretch the plain language of Rule 32 to the point that this Court is simply rewriting the rule, which, of course, we cannot do." W.B.S., 192 So. 3d at 424-25 (Joiner, J., concurring specially) (citing Marshall v. State, 884 So. 2d 900, 905 n.5 (Ala. 2003)).

In sum, M.S.P., as a youthful offender, cannot use Rule 32 as a mechanism to collaterally challenge his youthful-offender adjudication.[1]

[1]We recognize that in J.N.J., Jr. v. State, 690 So. 2d 515 (Ala. Crim. App. 1996), this Court addressed the merits of a Rule 32 petition that

Instead, just as is the case with a juvenile who has been adjudicated delinquent, a person who has been adjudicated a youthful offender may collaterally attack his or her adjudication by filing the common-law writ of error coram nobis. See W.B.S. v. State, 244 So. 3d 133, 143 (Ala. Crim. App. 2017) (holding that "the common-law writ of error coram nobis is the proper procedural mechanism by which W.B.S. may collaterally challenge his delinquency adjudications").[2]

M.S.P.'s error in the form of his collateral challenge to his youthful-offender adjudication and the lower court's treatment of M.S.P.'s filing as a Rule 32 petition, however, are not impediments to this Court's review

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challenged a youthful-offender adjudication. To the extent that J.N.J. or any other case from this Court implies that a youthful offender may file a Rule 32 petition challenging his or her youthful-offender adjudication, those cases are overruled.

[2]In W.B.S., this Court asked the Alabama Supreme Court "to amend either the Alabama Rules of Juvenile Procedure or the Alabama Rules of Criminal Procedure to provide juvenile delinquents a mechanism for postadjudication relief." 192 So. 3d at 420. Although no such amendments have been made to the rules at the time of this opinion, this Court asks the Alabama Supreme Court to consider amending those rules also to provide youthful offenders a mechanism for postadjudication relief. Certainly, "a 'well-defined procedure would be preferable to using common law writs to bring such claims.' " W.B.S., 192 So. 3d at 420 (quoting W.B.S., 192 So. 3d at 426 (Burke, J., dissenting)).

of M.S.P.'s arguments on appeal.[3] The Alabama Supreme Court has made it clear that courts are required to treat a filing according to its substance and not its style, see Ex parte Deramus, 882 So.2d 875, 876 (Ala. 2002),

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[3]Admittedly, in W.B.S., this Court did not treat W.B.S.'s Rule 32 petition as a petition for a writ of error coram nobis and address the merits of his claims. Instead, this Court affirmed the circuit court's dismissal of W.B.S.'s Rule 32 petition and noted that W.B.S. could pursue his claims by filing a common-law writ in the juvenile court where he was adjudicated delinquent. Judge Burke dissented, explaining that, although he agreed that Rule 32 does not apply to juveniles, he would "treat W.B.S.'s petition as a petition for extraordinary relief through a common-law writ" and "reverse the circuit court's judgment dismissing W.B.S.'s petition and remand [the] case to the circuit court for that court to address W.B.S.'s" claims. W.B.S., 192 So. 2d at 426 (Burke, J., dissenting). Although this Court did not adopt Judge Burke's approach in W.B.S., we do so here because W.B.S. came before this Court in a unique way, presenting this Court with a very narrow question -- specifically, whether a juvenile may use Rule 32 to collaterally challenge a delinquency adjudication.

In W.B.S., the circuit court dismissed W.B.S.'s Rule 32 petition, without addressing the merits of his petition, finding that a juvenile cannot use Rule 32 as a mechanism to challenge his or her delinquency adjudication. On appeal, W.B.S. asked this Court to answer the question whether Rule 32 was a remedy available to juveniles -- W.B.S. did not ask this Court to evaluate the merits of the claims raised in his petition. And even if W.B.S. had asked this Court to review the merits of his claims, this Court could not have done so because the circuit court itself did not first address W.B.S.'s claims. Here, unlike in W.B.S., the lower courts addressed M.S.P.'s claims, and he asks this Court to review the merits of his claims.

but this Court has also held that, if a lower court does not do so, "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." Bagley v. State, 186 So. 3d 488, 489 (Ala. Crim. App. 2015). Thus, we treat M.S.P.'s filing as a writ of error coram nobis and, if the lower court's decision is correct, we will affirm its summary dismissal of M.S.P.'s petition.

> " 'At common law, there were two writs, one the writ of error, simpliciter, and the other the writ of error coram nobis. The writ of error was to review a matter apparent on the record. The writ of error coram nobis was to preserve the purity of a law court's judgment with respect to a matter not apparent on the record.'
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> "Ex parte Banks, 42 Ala. App. 669, 672, 178 So. 2d 98, 101 (1965).
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> " 'The writ of error coram nobis was one of the oldest remedies of the common law. It lay to correct a judgment rendered by the court upon errors of fact not appearing on the record and so important that if the court had known of them at the trial it would not have rendered the judgment. The ordinary writ of error lay to an appellate court to review an error of law apparent on the record. The writ of error coram nobis lay to the court, and preferably to the judge that rendered the contested judgment. Its purpose was to allow the correction of an error not appearing in the record and of a

> judgment which presumably would not have been entered had the error been known to the court at the trial. Further, a judgment for the plaintiff in error on an ordinary writ of error may reverse and render the judgment complained of, while a judgment for the petitioner on a writ of error coram nobis necessarily recalls and vacates the judgment complained of and restores the case to the docket for new trial.'
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> "Joseph G. Gamble, Jr., The Writ of Error Coram Nobis in Alabama, 2 Ala. L. Rev. 281, 281-82 (1950) (footnotes omitted; some emphasis added). As the Supreme Court of Tennessee has stated: 'The writ of error coram nobis is an extraordinary remedy known more for its denial than its approval. Penn v. State, 282 Ark. 571, 670 S.W.2d 426, 428 (Ark. 1984).' State v. Mixon, 983 S.W.2d 661, 666-67 (Tenn. 1999). Even so, 'Alabama Courts allow the writ of error coram nobis to attack judgments in certain restricted instances,' Gamble, 2 Ala. L. Rev. at 295, and the Alabama Supreme Court has recognized that an ineffective-assistance-of-counsel claim is cognizable in a petition for a writ of error coram nobis. See, e.g., Ex parte Boatwright, 471 So. 2d 1257, 1259 (Ala. 1985) (recognizing that a claim of ineffective assistance of counsel is cognizable in a petition for a writ of error coram nobis)."

W.B.S., 244 So. 3d at 142. Similarly, this Court has reviewed a double-jeopardy claim raised in a petition for writ of error coram nobis. See, e.g., Hall v. State, 521 So. 2d 1373, 1375 (Ala. Crim. App. 1988) (addressing Hall's double-jeopardy claim that was raised in his petition for writ of error coram nobis).

As set out above, in his petition, M.S.P. alleged that his youthful-offender adjudication was due to be set aside because, he said, his youthful-offender adjudications violated principles of double jeopardy in that they arose "out of the exact same incident and at the same time and place"; that he "never signed an Explanation of Rights and Plea of Guilty Form"; and that his counsel was ineffective. (C. 46.)

As for M.S.P.'s allegation of ineffective assistance of counsel, that claim was properly dismissed because M.S.P. waited too long to raise it. Although "there is no statutory limit for coram nobis," Allen v. State, 150 So. 2d 399, 401 (Ala. Ct. App. 1963), a person can waive a constitutional claim if they wait too long to raise it in a petition for writ of error coram nobis, see, e.g., Hamilton v. State, 220 So. 2d 267, 268 (Ala. 1969) (holding that the petitioner was barred from raising his jury-venire claim in an error coram nobis petition when he waited 36 years to raise it). Here, M.S.P. was convicted in August 2002 and did not file his petition challenging the effectiveness of his counsel until over 18 years later. Thus, "it now comes too late." Hamilton, 220 So. 2d at 662.

As for M.S.P.'s allegation that his three adjudications for third-degree burglary violate principles of double jeopardy because, he says, those offenses arose "out of the exact same incident and at the same time and place," that claim was properly dismissed because "the petition for writ of error coram nobis does not lie to review claims that could have been but were not raised at trial or on appeal." Carter v. State, 473 So. 2d 668, 671 (Ala. Crim. App. 1985). Clearly, this double-jeopardy claim could have been raised in the trial court or during a direct appeal of M.S.P.'s youthful-offender plea. In addition, to the extent that M.S.P. raises a jurisdictional issue, " 'the writ is not available to attack the validity of the judgment on jurisdictional grounds.' " Amend v. City of Mobile, 497 So. 2d 605, 606 (Ala. Crim. App. 1986) (quoting 24 C.J.S. Criminal Law § 1606(8)). Moreover, to the extent M.S.P. raises a factual issue regarding the date of the three offenses, it is clearly without merit on the face of the record. The State's answer to M.S.P.'s petition included an attachment that contained three case-action summaries reflecting three different offense dates for the three different underlying cases. (C. 68-70.) The circuit court specifically found that the "offenses occurred on

07/24/2002, 08/04/2002, and 08/05/2002" and that M.S.P.'s "claim that they arose from the same incident simply is not correct." (C. 61, 62.) Indeed, M.S.P. entered guilty pleas in three different cases, which were "separate incidents" (C. 62) as revealed by the case-action-summary sheets and the circuit court's order. For these reasons, M.S.P. is not entitled to relief on this claim.

Finally, M.S.P.'s claim that his youthful-offender adjudication is due to be vacated because he "never signed an Explanation of Rights and Plea of Guilty From pursuant to Rule 14.4, [Ala. R. Crim. P.,] in violation of Due Process," was also properly dismissed. To the extent that M.S.P. raises a constitutional claim concerning the failure to sign an "Explanation of Rights Plea of Guilty" form, that allegation was properly dismissed because M.S.P. waited too long to raise it, because M.S.P. could have raised that claim at trial or on appeal and did not, and because it concerns a question of law, not fact. To the extent that M.S.P.'s allegation may be construed as claiming that the trial court committed a technical error by not including an Explanation of Rights Plea of Guilty form in the record, that claim was properly dismissed because "[t]echnical errors

caused by unintentional administrative negligence do not constitute grounds for error coram nobis." Little v. State, 426 So. 2d 527, 531 (Ala. Crim. App. 1983).

## Conclusion

Accordingly, the circuit court did not err when it denied M.S.P.'s petition for a writ of certiorari challenging the district court's summary dismissal of his postadjudication petition. We, therefore, affirm its judgment.

AFFIRMED.

Windom, P.J., and McCool, J., concur. Kellum, J., concurs in the result. Minor, J., recuses himself.