

REL: October 8, 2021

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

---

**CR-20-0462**

---

**Artis Cleonce Matthews**

**v.**

**State of Alabama**

**Appeal from Montgomery Circuit Court  
(CC-16-876.61)**

KELLUM, Judge.

Artis Cleonce Matthews appeals the Montgomery Circuit Court's denial, after a hearing, of his petition for postconviction relief filed

CR-20-0462

pursuant to Rule 32, Ala. R. Crim. P. For the reasons that follow, we dismiss his appeal.

In 2016, Matthews was convicted of two counts of attempted murder. The trial court subsequently sentenced him, as a habitual felony offender, to life imprisonment for each conviction, the sentences to run consecutively. This Court affirmed Matthews's convictions and sentences on direct appeal in an unpublished memorandum issued on December 8, 2017. Matthews v. State (No. CR-16-0768), 268 So. 3d 608 (Ala. Crim. App. 2017) (table). The Alabama Supreme Court denied certiorari review, and this Court issued a certificate of judgment on February 16, 2018.

Matthews, acting pro se, filed his Rule 32 petition on May 14, 2019. He filed the standard form found in the Appendix to Rule 32, and checked on the form as the ground for relief that he was denied the effective assistance of counsel. He did not attach a supplement setting out the details of his claim. The record also contains no request to proceed in forma pauperis. Nonetheless, the circuit court issued an order on May 28, 2019, finding Matthews to be indigent and appointing counsel to represent him. That same day, the circuit court scheduled a hearing for August 16,

2019, and gave the State 30 days to respond to the petition. On July 24, 2019, the State filed an answer and a motion to dismiss Matthews's petition, arguing that the petition should be summarily dismissed as insufficiently pleaded. On July 25, 2019, the circuit court issued an order summarily dismissing Matthews's petition on the ground that it was insufficiently pleaded.

On August 12, 2019, Matthews filed a pro se motion to reconsider. In that motion, Matthews argued that the circuit court erred in summarily dismissing his petition without affording his appointed counsel the opportunity to amend the petition and that his appointed counsel had been ineffective for not consulting with him and filing an amended petition on his behalf.<sup>1</sup> On August 16, 2019, appointed counsel filed a notice of appearance. Matthews, through appointed counsel, filed an amended motion to reconsider on August 26, 2019, arguing that the failure to amend the petition before the court had summarily dismissed

---

<sup>1</sup>Matthews also stated in the motion that he had, in fact, submitted with his petition a request to proceed in forma pauperis but that the circuit court had denied the request and he had paid the filing fee.

CR-20-0462

it was because counsel had been unaware of her appointment to the case. On August 28, 2019, the circuit court issued an order setting aside its July 25, 2019, summary dismissal of Matthews's petition.

Matthews, through appointed counsel, filed an amended Rule 32 petition on September 28, 2019, arguing that his trial counsel was ineffective for introducing into evidence his prior convictions, for not introducing into evidence a police-department supplemental offense report, and for not pursuing an intoxication defense, and that the trial court had improperly constructively amended the indictment during its jury instructions. The circuit court conducted an evidentiary hearing on Matthews's petition on January 27, 2020. On January 30, 2020, the State filed a supplemental answer to the petition, arguing that Matthews's claims of ineffective assistance of counsel were meritless and that Matthews had abandoned his claim that the trial court had improperly amended the indictment because he had not presented any evidence regarding that claim at the hearing. On March 8, 2021, the circuit court issued an order denying Matthews's petition. Matthews filed a notice of appeal on March 24, 2021.

Matthews's appeal is due to be dismissed because the circuit court lacked jurisdiction to set aside its July 25, 2019, summary dismissal of Matthews's petition. In Loggins v. State, 910 So. 2d 146 (Ala. Crim. App. 2005), this Court faced a similar situation. There, the circuit court issued an order summarily dismissing Kenneth Loggins's Rule 32 petition on December 10, 2001. Six months later, Loggins filed a motion requesting that the circuit court set aside its summary dismissal. On May 28, 2002, the circuit court granted Loggins's motion, set aside its December 2001 order, and then reissued the order. Loggins appealed, and we dismissed the appeal, explaining:

"It is well settled that a circuit court generally retains jurisdiction to modify a judgment for only 30 days after the judgment is entered. See, e.g., Ex parte Bishop, 883 So. 2d 262, 264 (Ala. Crim. App. 2003) ('According to established precedent, a trial court retains jurisdiction to modify a ruling for 30 days.'). This general rule applies to Rule 32 petitions. See Henderson v. State, ... [933 So. 2d 395] (Ala. Crim. App. 2004). A motion for a new trial or a motion in arrest of judgment may be filed within 30 days of the date of sentencing, see Rule 24.1(b) and Rule 24.2(b), Ala. R. Crim. P., in which case, the sentencing court retains jurisdiction to rule on the motion beyond 30 days, see Rule 24.4, Ala. R. Crim. P., and the filing of such a motion tolls the time for filing a notice of appeal. See Rule 4(b)(1), Ala. R. App. P. ('If a motion in arrest of judgment, motion for new trial, or motion for

judgment of acquittal has been filed within 30 days from pronouncement of the sentence, an appeal may be taken within 42 days (6 weeks) after the denial or overruling of the motion.'). However, Rule 24 has no application to postconviction proceedings under Rule 32. See Patterson v. State, 549 So. 2d 635, 636 (Ala. Crim. App. 1989) ('The language of [Rule 24] clearly does not contemplate the filing of a motion for new trial after the denial of a Rule 20 [now Rule 32] petition.').

"In the context of a Rule 32 petition, the postjudgment motion frequently filed by petitioners and the one recognized by this Court, is a motion to reconsider or to modify the judgment. However, such a postjudgment motion, even if timely filed, does not extend the circuit court's jurisdiction beyond 30 days after the denial of the petition. See, e.g., Henderson, *supra* (holding that the circuit court lacked jurisdiction to conduct an evidentiary hearing on a petitioner's timely motion to reconsider more than 30 days after the court's denial of the Rule 32 petition). Nor does the filing of such a motion toll the time for filing a notice of appeal. See, e.g., Ex parte Wright, 860 So. 2d 1253, 1254 (Ala. 2002) (holding that, in the context of postconviction relief, the 42-day appeal period runs from the date of the circuit court's denial of the Rule 32 petition if the court does not issue a separate written order of denial or, if the court issues a separate written order denying the Rule 32 petition, the date that order is filed in the circuit clerk's office), and Conley v. State, 545 So. 2d 246, 247 (Ala. Crim. App. 1989) ('A motion to reconsider or amend does not fall within that category of motions that tolls the time for appeal under the Alabama Rules of Appellate Procedure.'). As this Court noted in Patterson, '[n]either the Alabama Rules of Criminal Procedure nor the Alabama Rules of Appellate Procedure provide a procedure for suspending the time for

appeal upon the filing of a motion to reconsider the denial of a Rule 20 [now Rule 32] petition.' 549 So. 2d at 636.

"Thus, in this case, the circuit court lost jurisdiction to modify its ruling 30 days after December 10, 2001, the date it denied Loggins's Rule 32 petition, and its May 2002 order purporting to vacate and reissue its December 10, 2001, order is void. Because the May 2002 order is void, the only order from which Loggins could have appealed is the December 10, 2001, order. However, Loggins did not file his notice of appeal until June 4, 2002, almost six months after the December 10, 2001, order was entered. Rule 32.10, Ala. R. Crim. P., provides that either party may appeal a circuit court's ruling on a Rule 32 petition by filing a timely notice of appeal in accordance with Rule 4, Ala. R. App. P. Rule 4(a)(1), Ala. R. App. P., provides that a notice of appeal must be filed 'with the clerk of the trial court within 42 days (6 weeks) of the date of the entry of the judgment or order appealed from.' ' "Timely filing of the notice of appeal is a jurisdictional act. It is the only step in the appellate process which is jurisdictional." ' Melson v. State, 902 So. 2d 715, 719 (Ala. Crim. App. 2004), quoting Committee Comments to Rule 3, Ala. R. App. P. ' "[A] court cannot extend, expand, or otherwise modify the time for perfecting an appeal. A court cannot breathe life into a dead appeal." ' Symanowski v. State, 606 So. 2d 171, 173 (Ala. Crim. App. 1992), quoting Wood v. City of Birmingham, 380 So. 2d 394, 396 (Ala. Crim. App. 1980)."

910 So. 2d at 148-50 (footnotes omitted).

Similarly, here, the circuit court lost jurisdiction to modify its summary dismissal of Matthews's petition 30 days after July 25, 2019, or

CR-20-0462

on August 26, 2019,<sup>2</sup> two days before it issued the August 28, 2019, order purporting to set aside the summary dismissal. Although Matthews's August 12, 2019, motion to reconsider and his August 26, 2019, amended motion to reconsider were both timely filed, they did not extend the circuit court's jurisdiction beyond August 26, 2019, and both were deemed denied as a matter of law when the circuit court lost jurisdiction. Therefore, the circuit court's August 28, 2019, order and all subsequent orders and proceedings in this case, including the evidentiary hearing and the circuit court's March 8, 2021, order purporting to deny Matthews's petition after the hearing, are void for lack of jurisdiction.

Because "[a] void judgment will not support an appeal," Madden v. State, 885 So. 2d 841, 844 (Ala. Crim. App. 2004), "the only order from which [Matthews] could have appealed is the [July 25, 2019,] order." Loggins, 910 So. 2d at 149. However, Matthews's March 24, 2021, notice of appeal was not timely filed within 42 days of the July 25, 2019, order.

---

<sup>2</sup>The 30th day after July 25, 2019, was Saturday, August 24, 2019; therefore, pursuant to Rule 1.3(a), Ala. R. Crim. P., the court retained jurisdiction until the end of the following business day, Monday, August 26, 2019.



CR-20-0462

See Rule 4(a)(1), Ala. R. App. P. Therefore, this appeal is due to be, and is hereby, dismissed.

APPEAL DISMISSED.

Windom, P.J., and McCool and Cole, JJ., concur. Minor, J., concurs specially, with opinion.

CR-20-0462

MINOR, Judge, concurring specially.

I concur in the Court's decision to dismiss Artis Cleonce Matthews's appeal from the Montgomery Circuit Court's judgment denying his Rule 32, Ala. R. Crim. P., petition for postconviction relief. Under Loggins v. State, 910 So. 2d 146 (Ala. Crim. App. 2005), Matthews's postjudgment motions to reconsider did not toll the time for Matthews to file a notice of appeal. Thus, his appeal is untimely.

I write separately to recommend that the Alabama Supreme Court amend Rule 24.4, Ala. R. Crim. P., to include a timely filed motion to reconsider a judgment denying a Rule 32 petition. Such an amendment would make explicit what this Court implies regarding denial of such a motion by operation of law, and it would clarify what issues are denied by operation of law when a court fails to rule before it loses jurisdiction to do so.

This Court holds that, because the circuit court lost jurisdiction before it ruled on Matthews's postjudgment motions to reconsider, those motions "were deemed denied as a matter of law." \_\_\_ So. 3d at \_\_\_. In so

CR-20-0462

holding, this Court relies on the principle that a court loses jurisdiction after 30 days to modify a final judgment.

This Court has stated that a motion to reconsider a judgment denying a Rule 32 petition "was denied by operation of law." Walker v. State, 320 So. 3d 1, 7 (Ala. Crim. App. 2020). This Court, however, cited no authority for that proposition, apparently concluding—as the Court does here—that the motion was implicitly denied when the circuit court lost jurisdiction to modify its judgment.<sup>3</sup>

I have concerns about implicit denial by operation of law of a motion to reconsider. First, it conflicts with Rule 24.4, Ala. R. Crim. P.,<sup>4</sup> which

---

<sup>3</sup>I authored Walker for the Court, and at least one opinion of this Court has relied on Walker for its statement about the denial by operation of law of a postjudgment motion in a Rule 32 petition. State v. Stafford, [Ms. CR-19-0187, Sept. 11, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ n.3 (Ala. Crim. App. 2020) ("However, even if the trial court did not consider the State's motion for reconsideration, the State's motion preserved for appellate review the arguments raised therein when it was denied by operation of law 30 days after the trial court entered its final judgment. See, e.g., Walker v. State, 320 So. 3d 1, 7 (Ala. Crim. App. 2020) (holding that Walker's motion to reconsider, which was denied by operation of law, preserved for appellate review the issues Walker raised in that motion).").

<sup>4</sup>Rule 24.4, Ala. R. Crim. P., provides:

"No motion for new trial or motion in arrest of judgment shall

states that only specific postjudgment motions are denied by operation of law. As Loggins recognized, Rule 24.4 does not apply to motions to reconsider, and this Court lacks the authority to amend Rule 24.4.

Second, it undermines the general rule that a complaining party needs an adverse ruling to preserve an issue for appellate review. See, e.g., Stallworth v. State, 171 So. 3d 53, 89 (Ala. Crim. App. 2013); Moore v. State, 48 Ala. App. 719, 267 So. 2d 509, 512 (1972). One exception to this rule appears to be when a Rule 32 petitioner challenges a court's adoption of the State's proposed order. There, a petitioner must "raise this issue in the circuit court, by way of postjudgment motion, or

---

remain pending in the trial court for more than sixty (60) days after the pronouncement of sentence, except as provided in this section. A failure by the trial court to rule on such a motion within the sixty (60) days allowed by this section shall constitute a denial of the motion as of the sixtieth day; provided, however, that with the express consent of the prosecutor and the defendant or the defendant's attorney, which consent shall appear in the record, the motion may be carried past the sixtieth day to a date certain; if not ruled upon by the trial court as of the date to which the motion is continued, the motion is deemed denied as of that date, unless it has been continued again as provided in this section. The motion may be continued from time to time as provided in this section."

CR-20-0462

otherwise." Broadnax v. State, 130 So. 3d 1232, 1241 (Ala. Crim. App. 2013) (emphasis added). This Court has not held that an adverse ruling on such an objection is required—only the objection, "by way of postjudgment motion, or otherwise." This Court presumably has assumed that the circuit court's loss of jurisdiction implicitly denies such an objection by operation of law.

Taken to its logical end, implying denial by operation of law could lead to a party no longer needing an express adverse ruling to preserve an issue for appellate review. The circuit court's loss of jurisdiction will deny by operation of law any issue not ruled on. Amending Rule 24.4, Ala. R. Crim. P., to include a postjudgment motion to reconsider a judgment denying a Rule 32 petition would avoid this unintended result.