Rel: October 8, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0644

Donald Ray Belue

v.

State of Alabama

Appeal from Colbert Circuit Court
(CC-94-238.66)

COLE, Judge.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

McCool and Minor, JJ., concur. Kellum, J., dissents, with opinion, which Windom, P.J., joins.

KELLUM, Judge, dissenting.

Donald Ray Belue filed what he styled as a Rule 32, Ala. R. Crim. P., petition for postconviction relief. In his petition, Belue alleged that his sentences were illegal because, he said, although the trial court ordered that he be given credit for time he had spent in jail awaiting trial, he was not actually given that credit as required by § 15-18-5, Ala. Code 1975. He requested as relief that he be given the jail credit to which he was entitled. After receiving a response from the State, the circuit court summarily dismissed Belue's petition, finding that his claim was precluded by Rules 32.2(a)(5), (b), and (c), Ala. R. Crim. P., and was meritless on its face. The majority affirms the circuit court's judgment in an unpublished memorandum, holding that Belue's claim is refuted by the record and is meritless and that, therefore, summary dismissal of Belue's Rule 32 petition was appropriate under Rule 32.7(d), Ala. R. Crim. P.

Although Belue couched his claim in terms of an illegal sentence, whether a defendant receives the jail credit to which he or she is entitled has no bearing on the legality of a sentence. Belue's claim is not actually a challenge to his sentence, but a challenge to the amount of jail credit (or

lack thereof) that he received. However, Rule 32 is not the proper avenue by which to challenge jail credit. " 'It is well established that a petition for writ of habeas corpus is the proper procedure to determine whether the appellant has been credited with the correct amount of actual time spent incarcerated pending trial for the offense for which he was eventually sentenced.' " Ex parte Collier, 64 So. 3d 1045, 1047 (Ala. 2010) (quoting Taunton v. State, 562 So. 2d 614, 614 (Ala. Crim. App. 1989)). It is equally well established that a motion or a petition must be treated according to its substance not its style. See, e.g., Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002). Because Belue's petition was, in substance, a petition for a writ of habeas corpus, it must be treated as such.

Generally, circuit judges "are presumed to know the law and to follow it in making their decisions." Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996). Thus, on appeal from the denial or dismissal of a mislabeled petition, if there is no affirmative indication in the record that the circuit court improperly treated the petition according to its style, this Court will presume that the circuit court properly treated the petition according to its substance. See, e.g., Knight v. State, 252 So. 3d 1108, 1111 (Ala. Crim.

App. 2017), and Bagley v. State, 186 So. 3d 488, 489 (Ala. Crim. App. 2015). On the other hand, if the record affirmatively reflects that the circuit court improperly treated the petition according to its style, that presumption does not apply, and this Court will reverse the circuit court's judgment and remand the cause for the circuit court to treat the petition according to its substance. See, e.g., Wedgeworth v. State, 286 So. 3d 78, 79 (Ala. Crim. App. 2019), and Shapley v. State, 260 So. 3d 69, 71 (Ala. Crim. App. 2018).

In this case, the circuit court's application of the procedural bars in Rule 32.2 to Belue's petition affirmatively indicates that the circuit court improperly treated Belue's petition as a Rule 32 petition instead of a petition for a writ of habeas corpus. I would reverse the circuit court's judgment and remand the cause for the circuit court to treat Belue's petition as a petition for a writ of habeas corpus. Therefore, I respectfully dissent.

Windom, P.J., concurs.