

Rel: November 3, 2023

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2023-2024

CR-2022-1273

Christopher B. Barksdale

v.

State of Alabama

Appeal from Talladega Circuit Court
(CC-20-156)

McCOOL, Judge.

Christopher B. Barksdale appeals his guilty-plea convictions for first-degree sodomy, see § 13A-6-63, Ala. Code 1975, and sexual abuse of a child less than 12 years old, see § 13A-6-69.1, Ala. Code 1975, and his

resulting concurrent sentences of 20 years in prison and 10 years in prison, respectively. We remand the case with instructions.

Facts and Procedural History

On September 26, 2022, the trial court conducted a guilty-plea hearing, during which Barksdale, while represented by counsel, pleaded guilty to first-degree sodomy and to sexual abuse of a child less than 12 years old. The trial court set a sentencing hearing for a later date.

On October 4, 2022, Barksdale filed a handwritten, pro se motion to withdraw his guilty plea. In that motion, Barksdale argued that his counsel had not represented him "to the best of her ability in the past 4 years," that he "had issues with her talking to the planttve [sic]," and that he has "wrote y'all several times for dismissal in pro se and y'all stricken me but my lawyer was not doing nothing for me is the reason I went pro se which federal laws state my public defender does not have to sign her name." (C. 152.) On October 26, 2022, the trial court conducted the sentencing hearing. At the very beginning of the hearing, without any input from Barksdale or his counsel, the trial court stated:

"There is a pending motion that was filed pro se by Mr. Barksdale, which is a motion to withdraw his plea. It is a one-page or three-quarter page, if you will, motion. The Court has read the motion word for word. The Court has also referred

back to the plea colloquy in this case that we took and as a result of that, the Court finds the motion to withdraw plea, based on information in the plea and not going outside of that motion, not well taken and it is respectfully overruled and denied."

(R. 25.)

The trial court then proceeded with the sentencing hearing, during which Barksdale was represented by the same counsel who had represented him at the guilty-plea hearing and who is representing him on appeal. Pursuant to a plea agreement, the trial court sentenced Barksdale to 20 years in prison for the first-degree sodomy conviction and to 10 years in prison for the sexual-abuse conviction.

On November 2, 2022, the trial court issued a written order concerning Barksdale's pro se motion to withdraw his guilty plea. That order stated:

"This matter coming before the Court on the 26th day of October 2022, based on the defendant's motion to withdraw plea; the presence of the defendant via closed circuit television at the Talladega County Jail; the presence of Trina Hammonds as counsel for the defendant; the presence of Jacob Argo for the State of Alabama; the Court having taken judicial knowledge of its file, including said motion; it is hereby ADJUDGED and ORDERED as follows:

"1. The Court finds defendant's pro se motion to withdraw plea not well-taken and is hereby DENIED."

(C. 155.) Barksdale appealed.

Discussion

On appeal, Barksdale's counsel has filed a woefully inadequate brief. The brief makes a bare allegation that the trial court erred in denying Barksdale's motion to withdraw his guilty plea. The argument in the brief consists entirely of the following paragraph repeated verbatim:

"The Defendant filed a Pro Se Motion to Withdraw his Guilty Plea on October 4, 2022 U.S. v. Leggison, 96 F.3d 1450 (7th Cir. 1996) a defendant states that the decision to withdraw a guilty plea is a matter of discretion with the trial court. That the Defendant filed the Motion to Withdraw his Guilty plea and the trial court had the discretion to grant the motion to withdraw the guilty plea and allow the defendant to request a jury trial."

Barksdale's brief, at 6.

That argument clearly fails to comply with Rule 28(a)(10), Ala. R. App. P., which requires that the argument contain "the contentions of the appellant/petitioner with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on." "Merely citing a case with no discussion as to its relevance is insufficient to satisfy Rule 28(a)(10)." Hodges v. State, 926 So. 2d 1060, 1075 (Ala. Crim. App. 2005). Further,

"[a]uthority supporting only "general propositions of law" does not constitute a sufficient argument for reversal.' Beachcroft Props., LLP v. City of Alabaster, 901 So. 2d 703, 708 (Ala.2004), quoting Geisenhoff v. Geisenhoff, 693 So. 2d 489, 491 (Ala. Civ. App. 1997). 'It is not the job of the appellate courts to do a party's legal research. Nor is it the function of the appellate courts to "make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument."' Pileri Indus., Inc. v. Consolidated Indus., Inc., 740 So. 2d 1108, 1110 (Ala. Civ. App. 1999) (citations omitted)."

Hodges, 926 So. 2d at 1074. "Because [Barksdale]'s argument fails to comply with Rule 28(a)(10), this issue is deemed to be waived." Id.

Nevertheless, though the issue was not raised on appeal, this Court has noticed a jurisdictional issue that we must address. That issue is, specifically, whether, when Barksdale moved to withdraw his guilty plea, he was either represented by counsel or knowingly, intelligently, and voluntarily waived his right to counsel.

As this Court explained in Colburn v. State, 236 So. 3d 916 (Ala. Crim. App. 2016),

"In Humphrey v. State, 110 So. 3d 396 (Ala. Crim. App. 2012), this Court stated:

"The Sixth Amendment right to counsel attaches at the initiation of adversary judicial proceedings, and extends to every critical stage of the proceedings A critical stage is any stage where a substantial right of an accused may be

affected ... and can arise in pre-trial as well as post-trial proceedings." Berry v. State, 630 So. 2d 127, 129 (Ala. Crim. App. 1993) (internal citations omitted). "A motion to withdraw a guilty plea is a critical stage in a criminal proceeding requiring representation of counsel or a valid waiver of the right to counsel." Berry, 630 So. 2d at 129.

"In Ex parte Pritchett, 117 So. 3d 356 (Ala. 2012), the Alabama Supreme Court recently discussed a case that is factually indistinguishable from Humphrey's. The facts in Pritchett were as follows:

" "[c]ounsel in [Pritchett's] case was appointed for [Pritchett], and at no point before the filing and adjudication of the motion to withdraw the guilty plea did counsel formally withdraw. Nonetheless, Pritchett filed a motion to withdraw his guilty plea that, in this case, we know was handwritten and that explicitly stated that it was being filed as a 'pro se' motion. Furthermore, we also know that, in this case, the ground for relief asserted in this motion was that counsel who had represented the defendant before the filing of the motion allegedly had been inadequate and ineffective. As in Berry, although Pritchett nominally had counsel of record at the time he filed his motion, it was clear that the motion was prepared and relief was sought by Pritchett without the involvement of that counsel."

"117 So. 3d at 361. The Supreme Court held that Pritchett was required to have the assistance of counsel -- or to have validly waived such assistance -- during the proceedings surrounding the motion to withdraw his guilty plea because Pritchett's motion to withdraw his guilty plea was a critical stage in the judicial proceedings. Id. Therefore, the Supreme Court reversed Pritchett's conviction and ordered "a hearing on Pritchett's motion to withdraw his guilty plea in which Pritchett is represented by counsel or in which the trial court determines that Pritchett has knowingly, intelligently, and voluntarily waived his right to counsel." Pritchett, 117 So. 3d at 362.'

"110 So. 3d at 398.

"In this case, as in Ex parte Pritchett, 117 So. 3d 356 (Ala. 2012), Humphrey, and similar cases, Colburn filed a pro se motion to withdraw his guilty plea. See also Pate v. State, 186 So. 3d 986 (Ala. Crim. App. 2015); Bailey v. State, 214 So. 3d 377 (Ala. Crim. App. 2015); Stewart v. State, 110 So. 3d 395 (Ala. Crim. App. 2012); and Frost v. State, 141 So. 3d 1103 (Ala. Crim. App. 2012). The motion was filed before Colburn's appointed counsel had withdrawn from his representation of Colburn. The record does not show that Colburn expressly waived his right to the assistance of counsel, nor does the record establish that the circuit court inquired into whether Colburn had knowingly, intelligently, and voluntarily waived his right to counsel. Therefore, this case is remanded with instructions for that court to ensure that Colburn is represented by counsel or that he knowingly and voluntarily waives his right to counsel before a ruling on the motion is issued. Colburn should be afforded the opportunity to file a new motion to withdraw his guilty plea through the assistance of counsel should Colburn wish to do so."

Colburn, 236 So. 3d at 917-18.

Furthermore, "[t]he denial of the right to counsel is a jurisdictional claim that can be raised at any time." Graham v. State, 199 So. 3d 829, 833 (Ala. Crim. App. 2016).

In the present case, Barksdale's motion to withdraw his guilty plea was a critical stage in the proceedings that required either that he be represented by counsel or that he validly waive the right to counsel. When Barksdale moved to withdraw his guilty plea, his counsel had not withdrawn. However, the motion claimed that his counsel's assistance was ineffective, and it is clear that the handwritten motion was prepared by Barksdale without the involvement of his counsel. At the beginning of the sentencing hearing, the trial court recognized that the motion was filed pro se, but there is no indication that Barksdale expressly waived his right to the assistance of counsel or that the trial court inquired into whether Barksdale had knowingly, intelligently, and voluntarily waived his right to counsel. Therefore, because this issue is a jurisdictional issue, even though it was not raised on appeal, we must remand the case to the trial court for it to conduct a hearing on Barksdale's motion to withdraw his guilty plea in which either Barksdale be represented by

counsel or the trial court determines that Barksdale has knowingly, intelligently, and voluntarily waived his right to counsel.

Conclusion

Based on the foregoing, the case is remanded to the trial court to conduct a hearing on Barksdale's motion to withdraw his guilty plea during which either Barksdale must be represented by counsel or the trial court must determine that Barksdale has knowingly, intelligently, and voluntarily waived his right to counsel. Barksdale should be afforded the opportunity to file a new motion to withdraw his guilty plea with the assistance of counsel if he wishes to do so. The trial court may grant or deny relief on the motion as it deems appropriate. Due return to this Court shall be filed within 56 days of the date of this opinion and shall include the trial court's written order granting or denying relief and a transcript of the hearing.

REMANDED WITH INSTRUCTIONS.

Windom, P.J., concurs. Kellum, Cole and Minor, JJ., concur in the result.