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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2011-2012

CR-10-0421

Aaron Coleman

v.

State of Alabama

Appeal from Coffee Circuit Court -- Elba Division
(CC-10-76 and CC-10-77)

On Return to Remand

PER CURIAM.

The appellant, Aaron Coleman, was convicted of two counts of the unlawful distribution of a controlled substance and was sentenced to concurrent terms of five years in prison. The

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sentences were split, and he was ordered to serve six months in prison followed by five years of supervised probation. Coleman appealed to this Court. We remanded the case for the circuit court to hold an evidentiary hearing and to make findings of fact as to whether there was an actual conflict of interest in defense counsel's representing both Coleman and the confidential informant who testified against him. See Coleman v. State, [Ms. CR-10-0421, September 30, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011). The circuit court has complied with our directions and has submitted its findings to this Court. The circuit court stated the following:

"(1) At the time of the trial of the defendant, trial counsel represented both the defendant and the prosecution's chief witness, a confidential informant named [F.C.].

"(2) During his representation of the confidential informant, trial counsel learned privileged information that later became relevant during the trial of the defendant but could not be disclosed by trial counsel without violating the attorney client privilege.

"(3) Trial counsel's knowledge of the privileged information materially limited his ability to perform his duties and vigorously represent the defendant for fear of actually divulging the privileged information and committing professional misconduct.

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"(4) The defendant was denied effective assistance of counsel by trial counsel's inability to fully cross examine the confidential informant."

(Return to remand, R. 3-4.)

We agree with the circuit court that Coleman established an actual conflict of interest by his counsel's simultaneous representation of both Coleman and the confidential informant who was the chief prosecution witness against Coleman. Based on the cases cited in our main opinion, Molton v. State, 651 So. 2d 663 (Ala. Crim. App. 1994), and Pinkerton v. State, 395 So. 2d 1080 (Ala. Crim. App. 1980), Coleman is entitled to a new trial with an attorney who is free from any conflict of interest.

Accordingly, Coleman's convictions for two counts of the unlawful distribution of a controlled substance are due to be reversed and this case is remanded to the Coffee Circuit Court for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Welch, Kellum, Burke, and Joiner, JJ., concur.
Windom, P.J., adheres to original dissent.