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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Ex parte Antonio Devoe Jones

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS**

(In re: Antonio Devoe Jones

v.

State of Alabama)

**(Houston Circuit Court, CC-00-353.60;
Court of Criminal Appeals, CR-13-1552)**

BOLIN, Justice.

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In March 2004, Antonio Devoe Jones was convicted of capital murder and was subsequently sentenced to death. The Court of Criminal Appeals affirmed his conviction and sentence on direct appeal. Jones v. State, 987 So. 2d 1156 (Ala. Crim. App. 2006) ("Jones I"). On January 23, 2009, Jones filed a Rule 32, Ala. R. Crim. P., petition in the Houston Circuit Court challenging his capital-murder conviction and sentence of death. On June 19, 2014, the trial court entered an order summarily dismissing Jones's Rule 32 petition. Jones appealed the dismissal of his Rule 32 petition, and the Court of Criminal Appeals, by order, dismissed Jones's appeal in accordance with that court's decision in Loggins v. State, 910 So. 2d 146 (Ala Crim. App. 2005), and the Court of Civil Appeals' decision in K.P. v. Madison County Department of Human Resources, 243 So. 3d 835 (Ala. Civ. App. 2017). Jones v. State (No. CR-13-1552, Dec. 12, 2017), ___ So. 3d ___ (Ala. Crim. App. 2017) (table) ("Jones II"). Jones then petitioned this Court for a writ of certiorari, arguing that the decision of the Court of Criminal Appeals dismissing his appeal of the dismissal of his Rule 32 petition conflicts with this Court's

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decisions interpreting Rule 29, Ala. R. Crim. P. We granted the petition, and we reverse and remand.

Facts and Procedural History

In March 2004, Jones was convicted of capital murder for the intentional killing of Ruth Kirkland during the course of a burglary. The jury recommended, by a vote of 11 to 1, that Jones be sentenced to death. The trial court accepted the jury's recommendation and sentenced Jones to death. Jones's conviction and sentence were affirmed on direct appeal by the Court of Criminal Appeals. Jones I.

On January 23, 2009, Jones filed a Rule 32, Ala. R. Crim. P., petition in the Houston Circuit Court attacking his conviction and sentence. On February 23, 2009, a "Notice of Recusal and Request for Assignment of Judge" was submitted to this Court, stating that all the circuit judges in the 20th Circuit had recused themselves and requesting that a judge be appointed to preside over Jones's Rule 32 petition. On March 10, 2009, this Court assigned the case to retired Alabama Supreme Court Associate Justice H. Mark Kennedy. Since his retirement from this Court, Justice Kennedy has occasionally taken appointments to preside over cases on a temporary basis

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at the circuit-court level. At the time the case was assigned to Justice Kennedy, he was no longer practicing law and was working instead as an economic-development consultant in Montgomery, where he maintained a business office. Justice Kennedy did not maintain a legal office and did not have access to a legal staff, facilities for the electronic filing of orders, or court facilities.

On July 10, 2009, Edward Hosp and Christine Green accepted Jones's case on a pro bono basis and began preparing an amended Rule 32 petition. Because Justice Kennedy was not a sitting judge, counsel for Jones would send motions and proposed orders to Justice Kennedy by e-mail and would also mail materials to Justice Kennedy's business office in Montgomery. Although it appears that counsel for Jones worked diligently to prepare Jones's amended Rule 32 petition, they were unaware of a previously entered deadline for filing the amended Rule 32 petition. When that deadline passed without an amended Rule 32 petition being filed, Justice Kennedy entered an order on August 10, 2010, dismissing Jones's Rule 32 petition for lack of prosecution.

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On August 26, 2010, counsel for Jones timely filed a motion to reconsider the order of dismissal and to reinstate the case. On September 3, 2010, Justice Kennedy arranged a conference call with one of Jones's counsel and Clay Crenshaw, an assistant attorney general for the State of Alabama. During the conference call, counsel for Jones expressed his concern that Justice Kennedy's jurisdiction to reinstate the Rule 32 petition would expire on September 9, 2010. Justice Kennedy agreed to reinstate the case and asked counsel for Jones to submit a proposed order to that affect. To expedite the filing of the order reinstating the Rule 32 petition, counsel for Jones offered to send a "runner" to Justice Kennedy's Montgomery office on September 7, 2010, to pick up the signed order and then to carry the order to Houston County to file in the Houston Circuit Court. Justice Kennedy proposed that he e-mail the signed order reinstating the Rule 32 petition to the Houston County circuit clerk for filing. On September 7, 2010, Justice Kennedy e-mailed the order reinstating Jones's Rule 32 petition to the Houston County circuit clerk's office. The circuit clerk did not enter that order into the State Judicial Information System ("the SJIS") at that time.

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The parties proceeded as if the circuit-court clerk had entered the order reinstating Jones's Rule 32 petition. The parties agreed to a proposed scheduling order, which Justice Kennedy entered on September 24, 2010. Subsequently, Justice Kennedy learned that the September 7, 2010, order reinstating the Rule 32 petition had not been entered by the circuit clerk. Upon learning that the order had not been entered, Justice Kennedy again e-mailed the order to the clerk of the circuit court. On September 29, 2010, the circuit clerk stamped the order filed and entered the order in the SJIS. The order filed by the circuit clerk is dated September 7, 2010, and contained the handwritten notation: "Lost in mail, rec'd by email 9-29-10." In January 2011, Justice Kennedy recused himself from the case. On January 24, 2011, this Court appointed Judge Thomas E. Head III to preside over the Rule 32 proceedings.

Thereafter, the case proceeded for over six years with Jones having filed an extensive amended Rule 32 petition, which the Houston Circuit Court eventually dismissed. Jones timely appealed that decision to the Court of Criminal Appeals, which set the case for oral argument in April 2017.

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On April 13, 2017, the Court of Criminal Appeals issued an order identifying a potential jurisdictional defect in this case. The Court of Criminal Appeals noted:

"On August 10, 2010, the circuit court issued an order dismissing [the Rule 32] petition. Jones moved on August 26, 2010, that the circuit court reconsider its ruling and reinstate the case. On September 29, 2010, the circuit court granted Jones's motion and reinstated the case to its docket.

"However, this Court in Loggins v. State, 910 So. 2d 146 (Ala. Crim. App. 2005), held that a trial court retains jurisdiction to modify its judgment in a Rule 32 petition for only 30 days after a final order is entered and that no postjudgment motion will extend the jurisdiction of the circuit court beyond that 30-day period. ...

".....

"Accordingly, it is hereby ORDERED that the appellant shall have 30 days from the date of this order to present argument and relevant legal authority addressing whether this Court's decision in Loggins requires dismissal of the appeal."

(References to record omitted; footnote omitted; capitalization in original.)

On June 26, 2017, Jones moved the Court of Criminal Appeals to stay the proceedings in that court, or, in the alternative, to remand the case to the trial court, because Jones intended to file a motion pursuant to Rule 29, Ala. R.

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Crim. P., to correct what he maintained was a clerical error in the record that would address the Court of Criminal Appeals' jurisdictional concern. The State joined the motion, requesting that the Court of Criminal Appeals grant Jones's motion for a stay to allow the trial court the opportunity to resolve the issue whether the delayed entry of Justice Kennedy's September 7, 2010, order was a clerical error correctable under Rule 29, Ala. R. Crim. P. The Court of Criminal Appeals granted the motion and remanded the case to the trial court to consider Jones's Rule 29 motion.

On July 3, 2017, pursuant to Rule 29, Jones moved the trial court to correct a clerical error in the record, arguing that it was "clear that the failure to enter the order dated September 7, 2010, was a clerical error, likely caused by a failure on part of the Court Clerk," and that "[t]estimony from the attorneys and the judge involved support this conclusion." Jones further contended that to allow an error of the circuit-court clerk to deprive the appellate court of jurisdiction would be a clear denial of due process of law. Jones supported his Rule 29 motion with affidavits, including one from Justice Kennedy in which Justice Kennedy swore that

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he e-mailed his order reinstating Jones's Rule 32 petition to the circuit clerk's office on September 7, 2010, and that he had "no reason to believe" that the order reinstating the Rule 32 petition "had not been timely received by the clerk and entered onto the docket." Jones also supported his motion with copies of e-mails between Jones's counsel, the State, and Justice Kennedy that indicate that Justice Kennedy had indeed e-mailed the order reinstating the Rule 32 petition to the circuit clerk on September 7, 2010.

In its July 12, 2017, response, the State noted that it had conducted its own factual investigation into the circumstances surrounding the potential jurisdictional defect and that it found nothing refuting Justice Kennedy's assertion that he had e-mailed his order reinstating Jones's case to the circuit clerk's office on September 7, 2010. Accordingly, the State joined Jones in requesting that the trial court find that a clerical error had occurred in this case and that it correct the error by deeming Justice Kennedy's order reinstating the Rule 32 filed on September 7, 2010, effective, as Justice Kennedy had intended.

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On July 26, 2017, the trial court granted Jones's Rule 29 motion and ordered that the record be corrected to reflect Justice Kennedy's original intention that his order reinstating the Rule 32 petition be entered effective September 7, 2010. The trial court found that the error in the record was a clerical error that fell within the scope of Rule 29 and that the trial court had the authority to correct it. The trial court further found that because the clerical error was "based upon the recollection of the [trial] court" and there were no facts presented that directly contradict Justice Kennedy's recollection, the clerical error could not be disputed. Ex parte Baily, 778 So. 2d 163, 166 (Ala. 2000).

On return to remand, Jones, on September 5, 2017, filed a motion seeking to set a briefing schedule. The State did not oppose Jones's motion. On December 12, 2017, the Court of Criminal Appeals issued the following order dismissing Jones's appeal, which states, in relevant part:

"Rule 29, Ala. R. Crim. P., states:

"'Clerical mistakes in judgments, orders, or other parts of the record, and errors arising from oversight or omission may be corrected by the court at anytime of its own initiative or on the motion of any party and after such notice, if any, as the

court orders. During the pendency of an appeal or thereafter, such mistakes may be so corrected by the trial court.'

"Rule 29, Ala. R. Crim. P., is patterned after Rule 60(a), Ala. R. Civ. P., and the Supreme Court has relied on cases interpreting Rule 60(a) to interpret the Scope of Rule 29. 'Because Rule 29 is taken directly from Rule 60(a), Ala. R. Civ. P., cases construing Rule 60(a) should be examined to determine the proper construction to be placed on Rule 29.' See Dollar v. State, 687 So. 2d 209 (Ala. 1996).

"Recently, the Alabama Court of Civil Appeals in K.P. v. Madison County Department of Human Resources, 243 So. 3d 835 (Ala. Civ. App. 2017), held that Rule 60(a), Ala. R. Civ. P., could not be used to modify the date that a judgment was rendered. The Court of Civil Appeals stated:

"'The juvenile court's orders entered on June 15, 2017, purported to change the date of the postjudgment orders to reflect an entirely different date of rendering. Such action is impermissible under Rule 60(a) and is insufficient to confer any legal effect on the juvenile court's void orders, because changing the date on which an order was rendered is not

""the kind of mistake 'associated with mistakes in transcription, alteration, or omission of any papers and documents' that can be corrected pursuant to Rule 60(a). For this Court to hold otherwise would allow Rule 60(a) to be used 'to supply non-action by the court' in the place of its action and to make its judgment 'say something

other than what was originally announced.' This is not the function of Rule 60(a)."

"243 So. 3d at 839, quoting, in part Pierce v. American Gen Fin., Inc., 991 So. 2d 212, 217 (Ala. 2008). In essence, the Court of Civil Appeals held that modifying the date of entry of judgment was an action that modified the judgment itself; therefore, it was beyond the scope of Rule 60(a), Ala. R. Civ. P. The Alabama Supreme Court in Pierce also stated:

"'"'"Since a correction pursuant to Rule 60(a) may be made at any time and on the trial court's initiative, the rule should be cautiously applied to preserve the integrity of final judgments. Otherwise, the finality of a judgment would only be illusory since the possibility would exist of substitution of a new judgment for the original one at a later date."'"'"

"991 So. 2d at 217.

"This Court recognizes that 'the term "clerical errors" is not limited solely to errors by the clerk in transcription. It can also include errors by others, such as a jury foreman, counsel, a party, or the judge himself.' Continental Oil Co. v. Williams, 370 So. 2d 953, 954 (Ala. 1979). However, the scope of Rule 29 is not unlimited. See Pierce v. American Gen. Fin., Inc., supra. We hold that changing the date of entry of judgment is an action outside the scope of Rule 29, Ala. R. Crim. P., and the circuit court had no jurisdiction to modify the original date of the entry of judgment. See K.P. v. Madison County Department of Human Resources, supra. Thus, in accordance with this Court's decision in Loggins v. State, [910 So. 2d 146 (Ala. Crim. App. 2005),]

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and the Court of Civil Appeals' decision in K.P. v. Madison County Department of Human Resources, this case is hereby DISMISSED."

Jones II (capitalization in original).

Jones argues in his petition for a writ of certiorari that the Court of Criminal Appeals' ruling dismissing his appeal from the dismissal of his Rule 32 petition fundamentally changed the substance of Rule 29, Ala. R. Crim. P., and the decisions interpreting that rule as it is applied to correct clerical errors. Specifically, Jones contends that this rejection of the express language of the rule is contrary to this Court's decisions, which have consistently held Rule 29 should be used to make the record "speak the truth" in line with the intent of the court at the time of the ruling. Pierce v. American Gen. Fin., Inc., 991 So. 2d 212, 217 (Ala. 2008). Jones argues that Rule 29 should not have a newly created and implied exception prohibiting "changing the date of the entry of judgment" as a correction of a clerical mistake where there is uncontested proof that a clerk's mistake resulted in the failure to timely enter the judgment, contrary to the contemporaneous written instructions of the issuing judge.

Standard of Review

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""On certiorari review, this Court accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de novo the standard of review that was applicable in the Court of [Criminal] Appeals."" Ex parte S.L.M., 171 So. 3d 673, 677 (Ala. 2014) (quoting Ex parte Helms, 873 So. 2d 1139, 1143 (Ala. 2003), quoting in turn Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996)).

Discussion

Jones argues that the Court of Criminal Appeals' ruling fundamentally changes the substance of Rule 29 and conflicts with the decisions of this Court applying that rule to correct clerical errors. The State supports Jones's position and argues that the circuit clerk's failure to file a timely order of the trial court is precisely the type of clerical error Rule 29 was designed to remedy. The State further argues that the decision of the Court of Criminal Appeals holding otherwise conflicts with cases addressing Rule 29, is inconsistent with the purpose and objectives of the Alabama Rules of Criminal Procedure, and allows a simple, ministerial mistake to defeat

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the intent of the trial court and to upend years of litigation.

Rule 29 provides:

"Clerical mistakes in judgments, orders, or other parts of the record, and errors arising from oversight or omission may be corrected by the court at anytime of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal or thereafter, such mistakes may be so corrected by the trial court. Whenever necessary, a transcript of the record as corrected may be certified to the appellate court in response to a writ of certiorari or like writ, in conformity with Rule 10(f), [Ala.] R. App. P."

"Because Rule 29 is taken directly from Rule 60(a), Ala. R. Civ. P., cases construing Rule 60(a) should be examined to determine the proper construction to be placed on Rule 29." Dollar v. State, 687 So. 2d 209, 210 (Ala. 1996). This Court has stated:

"[T]he function of Rule 29 is to allow for the correction of strictly clerical errors or, put another way, for the correction of the record to reflect, but not to change, what was originally intended. Ex parte Bailey, 778 So. 2d 163, 165 (Ala. 2000) ('A trial court may correct a judgment or order in a manner to speak the truth only, not to change what the trial court originally intended and pronounced. See H. Maddox, Alabama Rules of Criminal Procedure, § 29.1, p. 888 (3d ed. 1999).')

Ex parte Collier, 64 So. 3d 1045, 1048 (Ala. 2010). The purpose of a Rule 60(a), Ala. R. Civ. P., or a Rule 29, Ala. R.

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Crim. P., motion to correct the record is to make the judgment or the record speak the truth. BMJA, LLC v. Murphy, 41 So. 3d 751, 756 (Ala. 2010). Thus, Rule 29 and Rule 60(a) do "not authorize the court to render a different judgment." Cornelius v. Green, 521 So. 2d 942, 945 (Ala. 1988). Those rules authorize the court only to correct a clerical error in the record to accurately reflect the judgment that was rendered, i.e., to make the record speak the truth. See Deramus Hearing Aid Ctr., Inc. v. American Hearing Aid Assocs., Inc., 950 So. 2d 292, 295 (Ala. 2006). See also Pierce v. American Gen. Fin., Inc., supra. "'The term "clerical errors" [under Rule 60(a)] is not limited solely to errors by the clerk in transcription. It can also include errors by others, such as a jury foreman, counsel, a party, or the judge himself." Dollar, 687 So. 2d at 210 (quoting Continental Oil Co. v. Williams, 370 So. 2d 953, 954 (Ala. 1979) (emphasis added in Dollar)). In interpreting the scope of Rule 60(a), this Court has stated:

"'"Since a correction pursuant to Rule 60(a) may be made at any time and on the trial court's initiative, the rule should be cautiously applied to preserve the integrity of final judgments. Otherwise, the finality of a judgment would only be illusory since the possibility would exist of substitution of a new judgment for the original one at a later date. Therefore, it is essential that there be something in

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the record from which the mistake or error to be corrected may be gleaned. See Ex parte ACK Radio Supply of Georgia, 283 Ala. 630, 219 So. 2d 880 (1969); Busby v. Pierson, 272 Ala. 59, 128 So. 2d 516 (1961); Tombrello Coal Co. v. Fortenberry, 248 Ala. 640, 29 So. 2d 125 (1947). Stated differently, the fact of mistake or error must be supported by the record of the proceedings. See Harris v. Harris, 256 Ala. 192, 54 So. 2d 291 (1951).""

Ex parte Brown, 963 So. 2d 604, 608 (Ala. 2007) (quoting Higgins v. Higgins, 952 So. 2d 1144, 1148 (Ala. Civ. App. 2006), quoting in turn Ex parte Continental Oil Co., 370 So. 2d 953, 956 (Ala. 1979) (Torbert, C.J., concurring specially)).

Relying upon the decision in K.P., supra, the Court of Criminal Appeals concluded that the trial court's changing of the date of entry of the judgment is an action outside the scope of Rule 29, Ala. R. Crim. P., and that the trial court had no jurisdiction to modify the original date of the entry of the judgment reinstating Jones's Rule 32 petition in this case, and it dismissed Jones's appeal. Jones II.

In K.P., the juvenile court entered judgments on December 27, 2016, terminating the mother's parental rights to her three children. On January 9, 2017, the mother timely filed motions to alter, amend, or vacate those judgments. The juvenile court scheduled the mother's postjudgment motions for

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a hearing to be held on January 23, 2017. On January 26, 2017, more than 14 days after the January 9, 2017, postjudgment motions were filed, the juvenile court rendered and electronically entered an order in each child's case in which it purported to grant the mother's postjudgment motion to allow the parties an additional opportunity to present evidence relating to the mother's drug-test results. On February 24, 2017, after an additional hearing, the juvenile court entered orders purporting to again terminate the mother's parental rights to each of her children. The mother appealed.

The Madison County Department of Human Resources ("DHR") moved to dismiss the mother's appeals. DHR argued that the mother's January 9, 2017, postjudgment motions were denied by operation of law on January 23, 2017, and that, therefore, the juvenile court's orders of January 26, 2017, were void because the juvenile court lacked jurisdiction to render any order after January 23, 2017. The mother responded by arguing, among other things, that the juvenile court orally granted her postjudgment motions at a hearing held on January 23, 2017, and that the juvenile court had the authority to correct the date on the orders, pursuant to Rule 60(a), Ala. R. Civ. P., from

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January 26, 2017, to January 23, 2017, because the January 26, 2017, date on the orders was a clerical error. On June 15, 2017, while the appeals were pending, the juvenile court entered the following order in each case:

"'Over the objections of [DHR], the Court hereby finds that due to a clerical error an order that was due to be entered on January 23, 2017 was erroneously entered on January 26, 2017. The appropriate date for this order to be entered was January 23, 2017. All records and transcripts from these proceeding[s] including the Clerk's record on appeal shall hereby reflect this corrected date of entry. In addition, this Court finds that the record on appeal shall be supplemented with this correct order.'"

K.P., 243 So. 3d at 837. Subsequently, DHR filed a renewed motion to dismiss in which it asserted that the juvenile court could not use Rule 60(a) to "back-date" its orders.

In dismissing the mother's appeals as untimely, the Court of Civil Appeals stated:

"[H]ere, the record conclusively establishes that the juvenile court's orders purporting to grant the mother's postjudgment motions were manually dated and signed by hand, and thus rendered pursuant to Rule 58(a)(1), Ala. R. Civ. P., on January 26, 2017. That date was after the mother's motions had been denied by operation of law, and those orders, therefore, were void. See [Ex parte] Limerick, 66 So. 3d [755] at 757 [(Ala. 2011)]. The record establishes that no order was rendered on the postjudgment motions on January 23, 2017. The juvenile court's orders entered on June 15, 2017, purported to change the date of the postjudgment orders to reflect an entirely different

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date of rendering. Such action is impermissible under Rule 60(a) and is insufficient to confer any legal effect on the juvenile court's void orders, because changing the date on which an order was rendered is not

"the kind of mistake "associated with mistakes in transcription, alteration, or omission of any papers and documents" that can be corrected pursuant to Rule 60(a). For this Court to hold otherwise would allow Rule 60(a) to be used "to supply non-action by the court" in the place of its action and to make its judgment "say something other than what was originally announced." This is not the function of Rule 60(a).'

"Pierce v. American Gen. Fin., Inc., 991 So. 2d 212, 217 (Ala. 2008)."

K.P., 243 So. 2d at 839.

K.P., however, is distinguishable from the present case and is not controlling. In K.P. the trial court rendered an untimely order when it purported to grant the mother's postjudgment motions on January 26, 2017, three days after the trial court lost jurisdiction to render orders in the cases on January 23, 2017. While the appeals were pending, the juvenile court attempted to remedy the defect through the use of the Rule 60(a) clerical-error rule by essentially backdating its orders of January 26, 2017, to reflect that the orders had been rendered on January 23, 2017. Essential to the Court of Civil

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Appeals' holding in K.P. -- that changing the date on which an order was rendered is not the kind of mistake that can be corrected by Rule 60(a) -- was that court's finding that the record conclusively established that the juvenile court's orders purporting to grant the mother's postjudgment motions were signed and dated on January 26, 2017, and were thus deemed rendered on that date pursuant to Rule 58(a)(1), Ala. R. Civ. P., while nothing in the record established that orders had been rendered on the postjudgment motions on January 23, 2017. K.P., supra.

In the present case, the record conclusively establishes that Justice Kennedy rendered a timely order reinstating Jones's Rule 32 petition on September 7, 2010, two days before the trial court was to lose jurisdiction to rule on Jones's postjudgment motion to reinstate the petition. The order itself was dated September 7, 2010, and was signed by Justice Kennedy. The order was forwarded on September 7, 2010, by Justice Kennedy to the clerk of the Houston Circuit Court with the intention that it be entered on that date. When it was discovered that the circuit clerk had failed to timely enter the order reinstating Jones's Rule 32 petition, Justice Kennedy

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again forwarded the same order -- the order of September 7, 2010 -- to the circuit clerk to be entered, which the clerk did on September 29, 2010.

Unlike the circumstances in K.P., Justice Kennedy's order reinstating Jones's Rule 32 petition was timely rendered on September 7, 2010, and the trial court's order granting Jones's Rule 29 motion in this case did not alter the date on which the order was rendered. The trial court's order granting Jones's Rule 29 motion in no way "render[s] a different judgment" in this case, Green, 521 So. 2d at 945; rather, it simply corrects the circuit clerk's ministerial error in failing to timely enter the order, so that the record accurately reflects Justice Kennedy's original order reinstating Jones's Rule 32 petition as having been rendered on September 7, 2010. Deramus Hearing Aid, 950 So. 2d at 295. Accordingly, the trial court did not err in granting Jones's Rule 29 motion to reflect that the order rendered on September 7, 2010, reinstating Jones's Rule 32 petition was entered by the trial court effective on that same date.

Conclusion

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Based on the foregoing, we reverse the judgment of the Court of Criminal Appeals and remand the case to that court for further proceedings. We also pretermitt discussion of the remaining issues raised by Jones, which are not properly before this Court.

REVERSED AND REMANDED.

Parker, C.J., and Bryan, Sellers, and Stewart, JJ., and Stuart and Main, Special Justices,* concur.

Shaw, Wise, Mendheim, and Mitchell, JJ., recuse themselves.

*Retired Chief Justice Lyn Stuart and retired Associate Justice James Allen Main were appointed on March 25, 2019, to serve as Special Justices in regard to this appeal. See § 12-2-14, Ala. Code 1975.