

rel: 01/23/2009

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2008-2009

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Ex parte Michael David Carruth

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

(In re: State of Alabama

v.

Michael David Carruth)

(Russell Circuit Court, CC-02-378.60;
Court of Criminal Appeals, CR-06-1967)

STUART, Justice.

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This Court granted Michael David Carruth's petition for a writ of certiorari to review the judgment of the Court of Criminal Appeals reversing the circuit court's judgment granting him an "out-of-time" petition for a writ of certiorari to this Court. We affirm the judgment of the Court of Criminal Appeals.

Procedural History

In October 2003, Michael David Carruth was convicted of four counts of capital murder for the intentional killing of William Brett Bowyer, who was less than 14 years of age.¹ He was also convicted of the attempted murder of Bowyer's father, first-degree robbery, and first-degree burglary. The trial court sentenced Carruth to death for the capital-murder convictions. It also sentenced him to life in prison for the convictions for attempted murder, first-degree robbery, and first-degree burglary. The Court of Criminal Appeals affirmed Carruth's capital-murder convictions and his death sentence

¹Carruth was convicted of killing William Brett Bowyer. The murder was made capital because the murder was committed during the course of a kidnapping, see § 13A-5-40(a)(1), Ala. Code 1975; during the course of a robbery, see § 13A-5-40(a)(2), Ala. Code 1975; and during the course of a burglary, see § 13A-5-40(a)(40), Ala. Code 1975; and because the victim was less than 14 years of age, see § 13A-5-40(a)(15), Ala. Code 1975.

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and his attempted-murder conviction and the corresponding sentence to life imprisonment, but it reversed his convictions for first-degree robbery and first-degree burglary. See Carruth v. State, 927 So. 2d 866 (Ala. Crim. App. 2005). Carruth's counsel filed an application for a rehearing with the Court of Criminal Appeals, which was overruled. Carruth's counsel did not file a petition for a writ of certiorari seeking this Court's review of the decision of the Court of Criminal Appeals affirming Carruth's capital-murder convictions and death sentence.

In October 2006, Carruth filed in the circuit court a Rule 32, Ala. R. Crim. P., petition requesting that he be allowed to file an out-of-time petition for a writ of certiorari in the Alabama Supreme Court. Carruth based his request for relief on Rule 32.1(f), Ala. R. Crim. P., because, he said, his failure to "appeal" the decision of the Court of Criminal Appeals to the Alabama Supreme Court was through no fault of his own. According to Carruth, his appellate counsel was ineffective because counsel did not petition the Alabama Supreme Court for certiorari review of the decision of the Court of Criminal Appeals. The circuit court entered an order

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granting Carruth permission to file an out-of-time petition for a writ of certiorari in this Court. The State appealed the circuit court's order to the Court of to the Criminal Appeals.

The Court of Criminal Appeals held that the circuit court erred in granting Carruth permission to file an out-of-time petition for a writ of certiorari in this Court. The Court of Criminal Appeals determined that the plain language of Rule 32.1(f), Ala. R. Crim. P., did not provide a mechanism for granting Carruth permission to file an out-of-time petition for a writ of certiorari in the Alabama Supreme Court. See State v. Carruth, [Ms. CR-06-1967, May 30, 2008] ___ So. 2d ___ (Ala. Crim. App. 2008). Carruth then petitioned this Court for a writ of certiorari to review of the decision of the Court of Criminal Appeals; we granted the writ.

Standard of Review

''[W]hen the facts are undisputed and an appellate court is presented with pure questions of law, the court's review in a Rule 32 proceeding is de novo.' Ex parte White, 792 So. 2d 1097, 1098 (Ala. 2001).'' Ex parte Clemons, [Ms. 1041915, May 4, 2007] ___ So. 2d ___, ___ (Ala. 2007).

Analysis

The issue presented by Carruth's petition is whether Rule 32.1(f), Ala. R. Crim. P., provides a ground for the circuit court to authorize a petitioner to file an out-of-time petition for a writ of certiorari in the Alabama Supreme Court.² When construing a rule of criminal procedure, this Court begins with the plain language of the rule itself; the words used in the rule must be given their plain meaning. See Ex parte Jett, [Ms. 1060281, July 20, 2007] ___ So. 2d ___ (Ala. 2007).

Rule 32.1, Ala. R. Crim. P., states:

"Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that:

". . . .

"(f) The petitioner failed to appeal within the prescribed time from the conviction or sentence itself or from the dismissal or denial of a petition previously filed pursuant to this rule and that failure was without fault on the petitioner's part."

²Carruth raised several grounds in his petition for certiorari review; however, because of our resolution of this ground, we pretermit discussion of the other grounds presented by Carruth.

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A plain reading of Rule 32.1(f), Ala. R. Crim. P., clearly provides a means for a petitioner to request the circuit court for an "out-of-time" appeal to the Court of Criminal Appeals from his or her conviction or sentence or from the dismissal or denial of a Rule 32 petition for postconviction relief. It allows the circuit court, if it concludes that the petitioner, through no fault of his or her own, failed to timely file a notice of appeal in the Court of Criminal Appeals, to grant the petitioner permission to file an "out-of-time" appeal in the Court of Criminal Appeals. Nothing in the language in Rule 32.1(f) lends itself to a conclusion that Rule 32.1(f) authorizes a circuit court to grant a petitioner permission to file an "out-of-time" petition for a writ of certiorari in this Court. Such an interpretation is not within the plain meaning of the rule and would unreasonably extend the scope of Rule 32.1(f), Ala. R. Crim. P. Cf. Elliott v. State, 768 So. 2d 422, 423 (Ala. Crim. App. 1999) ("It is clear from the wording of this rule that it applies only to situations where the notice of appeal [in the Court of Criminal Appeals] is untimely. This rule

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makes no mention of, and indeed it has no bearing on, applications for rehearing.").³

Conclusion

We affirm the judgment of the Court of Criminal Appeals holding that the circuit court erred, as a matter of law, in granting Carruth permission to file an "out-of-time" petition for a writ of certiorari in this Court.

AFFIRMED.

Lyons, Woodall, Smith, Bolin, Parker, and Murdock, JJ., concur.

Cobb, C.J., and Shaw, J., recuse themselves.

³Rule 2(b), Ala. R. App. P., provides the proper means for a petitioner who failed to timely file a petition for a writ of certiorari in the Alabama Supreme Court to request permission to file an out-of-time petition. Indeed, Carruth filed a Rule 2(b) motion in this Court. This Court denied Carruth's motion by order on February 28, 2008.