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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2014-2015

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1131010

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Ex parte Louis Murray

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF CRIMINAL APPEALS

(In re: Louis Murray

v.

State of Alabama)

(Montgomery Circuit Court, CC-83-462.64;  
Court of Criminal Appeals, CR-12-1534)

STUART, Justice.

WRIT QUASHED. NO OPINION.

1131010

Bolin, Parker, Shaw, Main, and Wise, JJ., concur.

Stuart, J., concurs specially.

Moore, C.J., and Bryan, J., dissent.

1131010

STUART, Justice (concurring specially).

I concur with this Court's decision to quash the writ of certiorari. I write to explain my reasoning.

In April 2013, Louis Murray filed his fifth Rule 32, Ala. R. Crim. P., petition for postconviction relief, attacking his sentence for his 1983 conviction for first-degree robbery, which had been enhanced pursuant to the Habitual Felony Offender Act, § 13A-5-9, Ala. Code 1975, in light of the State's proof that Murray had three prior felony convictions, to life imprisonment without the possibility of parole. In his Rule 32 petition, Murray alleged, among other grounds, that his sentence was illegal because, he said, the trial court had improperly enhanced his sentence by applying a 1975 robbery conviction for which, he alleged, he had been pardoned. The circuit court summarily dismissed the petition; Murray appealed to the Court of Criminal Appeals. The Court of Criminal Appeals determined that the circuit court had erred by not conducting an evidentiary hearing on Murray's claim that his sentence was illegal, and it remanded the case by order for the circuit court to conduct an evidentiary

1131010

hearing to address Murray's claim that his sentence was illegal.

Accordingly, on remand the circuit court conducted an evidentiary hearing. At the hearing, Murray testified that in July 1980 the Alabama Board of Pardons and Paroles ("the Board") had granted him a full pardon, including the restoration of his civil and political rights, for his 1975 robbery conviction. In support of his testimony, Murray introduced into evidence a copy of a document entitled "Certificate Granting Restoration of Civil and Political Rights." Murray also submitted the affidavit of Sarah Still, a pardon-unit manager with the Board. In her affidavit, Still averred that she had attempted to find Murray's file to verify the authenticity of the "Certificate Granting Restoration of Civil and Political Rights" but that she had been unable to locate the file. The circuit court also admitted into evidence the facsimile cover sheet for Still's affidavit. The cover sheet states:

"Please see the attached pardon certificate on Willie James Brown, aka Louis Murray, AIS# 109980. [He] was pardoned on a 1975 Montgomery Co. robbery case. The pardon did not have any restrictions."

1131010

At the hearing, Murray argued that the pardon he received in 1980 forgave not only the 1975 robbery conviction named in the certificate granting the restoration of his civil and political rights, but also his convictions that occurred before the 1975 conviction, i.e., a 1966 felony receiving-stolen-property conviction and a 1974 felony grand-larceny conviction. Additionally, Murray maintained, because he had also been pardoned for the 1966 and 1974 felony convictions, those convictions could not be used to enhance his sentence for his 1983 conviction. Murray further contended that his 1981 conviction for being a felon in possession of a pistol, see § 13A-11-72(a), Ala. Code 1975, could not be used to enhance his sentence for the 1983 conviction because, he said, the 1980 pardon had eradicated the legal effect of the felony convictions (the robbery and larceny convictions) upon which the 1981 conviction was based.

In response, the State argued that, even if Murray had been pardoned for the 1975 robbery conviction, that pardon did not preclude the use for sentence-enhancement purposes of convictions entered before the 1975 robbery conviction. The State introduced into evidence a certified copy of Murray's

1131010

1975 robbery conviction as well as certified copies of three other felony convictions attributable to Murray -- a 1966 receiving-stolen-property conviction, a 1974 grand-larceny conviction, and a 1981 conviction for possession of a pistol after having been convicted of a crime of violence. Each of those convictions were entered before Murray's 1983 conviction, the sentence for which was at issue during the hearing.

Following the hearing, the circuit court issued an order finding that the Board had granted Murray a pardon for his 1975 robbery conviction and that that conviction had been improperly used to enhance Murray's sentence for his 1983 conviction. The circuit court further found that Murray was not entitled to relief from the sentence of life imprisonment without the possibility of parole imposed pursuant to his 1983 conviction because, it determined, even without the 1975 conviction Murray had three prior felony convictions that could have been used to enhance his sentence.

On return to remand, the Court of Criminal Appeals affirmed the circuit court's judgment by an unpublished memorandum. Murray v. State (No. CR-12-1534, April 25, 2014),

1131010

\_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2014) (table). This Court granted certiorari review to determine the effect of the pardon for Murray's 1975 robbery conviction, i.e., whether the pardon of that conviction precluded the use for sentence-enhancement purposes of convictions preceding the 1975 robbery conviction.<sup>1</sup>

In my opinion, the circuit court and the Court of Criminal Appeals properly determined that Murray was not entitled to a new sentencing hearing. To obtain the requested relief of a new sentencing hearing, Murray had to establish by a preponderance of the evidence that the pardon of his 1975 robbery conviction also pardoned his "prior disqualifying convictions."<sup>2</sup> Murray did not meet this burden.

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<sup>1</sup>Murray's contention that use of his 1981 felon-in-possession-of-a-pistol conviction to enhance his sentence was improper is not properly before us. Murray's argument challenges the propriety of the felon-in-possession-of-a-pistol conviction. Such an argument must be made in a Rule 32 petition challenging that conviction, and a determination that that conviction is invalid must be made before a determination that the use of that conviction to enhance his 1983 sentence was improper can be made. Sanford v. State, 784 So. 2d 1080, 1082 n.2 (Ala. Crim. App. 2000) ("A Rule 32 petition can challenge only one conviction or the convictions that arose out of one proceeding. LeBlanc v. State, 609 So. 2d 9 (Ala. Crim. App. 1992).").

<sup>2</sup>Rule 32.3, Ala. R. Crim. P., provides that a petitioner shall have the burden of "proving by a preponderance of the

1131010

The Board's authority to act is governed by § 15-22-36, Ala. Code 1975, which states, in pertinent part:

"(a) In all cases, except treason and impeachment and cases in which sentence of death is imposed and not commuted, as is provided by law, the Board of Pardons and Paroles shall have the authority and power, after conviction and not otherwise, to grant pardons and paroles and to remit fines and forfeitures.

"(b) Each member of the Board of Pardons and Paroles favoring a pardon, parole, remission of a fine or forfeiture, or restoration of civil and political rights shall enter in the file his or her reasons in detail, which entry and the order shall be public records, but all other portions of the file shall be privileged.

"(c) No pardon shall relieve one from civil and political disabilities unless specifically expressed in the pardon. ..."<sup>3</sup>

(Emphasis added.)

"In determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature. As we have said:

"'"Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where

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evidence facts necessary to entitle the petitioner to relief."

<sup>3</sup>Although § 15-22-36 has been amended several times since 1980, when Murray received his pardon for the 1975 robbery conviction, with the exception of several minor changes in capitalization and punctuation, the quoted portion of the statute remains unchanged.

1131010

plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

"Blue Cross & Blue Shield v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992))."

DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275-76 (Ala. 1998).

A plain reading of § 15-22-36 reveals that the legislature vested in the Board the authority to grant an individual a pardon, a parole, the remission of a fine or forfeiture, or the restoration of civil and political rights. The use of the conjunction "or" in § 15-22-36(b) indicates that the legislature viewed each act by the Board as separate and distinct. In § 15-22-36(c), the legislature has specifically provided that, if the Board grants a pardon, the pardoned individual's civil and political rights are not restored by that pardon unless the pardon includes language expressly restoring those rights. Additionally, nothing in the language of § 15-22-36 indicates that the Board's restoration of civil and political rights to an individual who

1131010

has been convicted of an offense means that the Board thereby grants a pardon for that particular conviction. Indeed, treating the Board's restoration of an individual's civil and political rights as necessarily including a pardon for the particular conviction would ignore the fact that, under § 15-22-36(b) and (c), the restoration of a person's civil and political rights and a pardon are separate and distinct matters. Cf. Harrison v. Wigington, 269 Ga. 388, 389, 497 S.E.2d 568, 569 (1998) (recognizing that the authority of the Georgia Board of Pardon and Paroles "to grant pardons is an entirely separate and distinct power from its authority to remove disabilities imposed by law").

Unfortunately, it appears that this Court, in its election-contest caselaw, has used the term "pardon" as a blanket expression for different acts of the Board. For example, in Hogan v. Hartwell, 242 Ala. 646, 649, 7 So. 2d 889, 890 (1942), an election-contest case, this Court, when interpreting the import of the Board's act of restoring "'all Alabama Civil and Political Rights,'" labeled the Board's act as a "pardon" rather than identifying the specific act of the Board and refining its analysis to that specific act.

1131010

Likewise, in State ex rel. Sokira v. Burr, 580 So. 2d 1340 (Ala. 1991), another election-contest case, this Court again used the blanket term "pardon" when analyzing the import of the Board's grant of a "Certificate of Discharge from Parole with Restoration of Civil and Political Rights."<sup>4</sup>

In Ex parte Casey, 852 So. 2d 175 (Ala. 2002), this Court was asked to determine the import of the Board's grant of a pardon that included the restoration of the individual's civil and political rights. After considering the holding in Burr, that a "pardon," which included language expressly restoring an individual's civil and political rights, restored the individual's civil and political privileges taken away by the felony conviction, removing all legal incapacities resulting from that conviction, this Court held that a full and unconditional pardon for a specific conviction that included a reference to "all prior disqualifying convictions" precluded the use of the specific conviction named in the pardon as well as the use of all convictions received before the named conviction for sentence-enhancement purposes under the

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<sup>4</sup>An appellate court can take judicial notice of the record of other appellate proceedings before the same court. Veteto v. Swanson Servs. Corp., 886 So. 2d 756, 764 n. 1 (Ala. 2003).

1131010

Habitual Felony Offender Act.<sup>5</sup> The record in Ex parte Casey unequivocally established that the Board had granted Casey a pardon that included the restoration of his civil and political rights. This Court held that the language in the pardon certificate established that the Board's grant of a pardon had "blotted out" Casey's guilt with respect to the named 1968/1969 convictions as well as any "prior disqualifying convictions" and that any legal disabilities resulting from those convictions had been removed. 852 So. 2d at 181. This Court stated that the pardon made Casey "a new and innocent man" and, consequently, that any convictions entered before the 1968/1969 convictions named in the pardon certificate could not be used for sentence-enhancement purposes. Id.

In my opinion, for the holding in Ex parte Casey to apply in this case and for Murray to establish that he was entitled to a new sentencing hearing, Murray was required to present evidence demonstrating that the Board granted a pardon for his

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<sup>5</sup>I recognize the principle of stare decisis and that Ex parte Casey is precedent. However, I adhere to my dissent in Ex parte Casey; I believe that the case was wrongly decided and should be overruled.

1131010

1975 robbery conviction and that the pardon included a reference to "all prior disqualifying convictions." Here, the circuit court found that the Board granted Murray a pardon for his 1975 robbery conviction. However, unlike Ex parte Casey, in which the circuit court admitted into evidence a document that unequivocally stated that Casey had been pardoned for his 1968/1969 forgery convictions and for "all prior disqualifying convictions," the record in this case does not include any evidence of the legal effect of the pardon with regard to Murray's prior convictions. The circuit court did not find, and none of the evidence admitted at the hearing established, that the Board's grant of a pardon for Murray's 1975 robbery conviction included forgiveness for Murray's convictions that precede his 1975 robbery conviction. I cannot agree with the dissent that an unverified statement, which generally is inadmissible under the Alabama Rules of Evidence, by a pardon-unit manager satisfies Murray's burden of proof and supports reversal of the circuit court's judgment. Therefore, the circuit court properly held that Murray was not entitled to a new sentencing hearing.

1131010

Moreover, I cannot agree with the dissent that the Board's act of restoring Murray's civil and political rights is equivalent to a pardon by the Board. The certificate of restoration of political and civil rights admitted into evidence does not contain any language establishing that the Board granted Murray a pardon for the 1975 robbery conviction and that the pardon included language forgiving "all prior disqualifying convictions." Indeed, the only time the word "pardon" is used in the certificate admitted into evidence is to identify the issuing party, the "State Board of Pardons and Paroles." Because nothing in the record establishes by a preponderance of the evidence that Murray's pardon for the 1975 robbery conviction requires the preclusion of the use for sentence-enhancement purposes of convictions preceding the 1975 robbery conviction, the circuit court did not err in refusing to conduct a new sentencing hearing.

Furthermore, I cannot interpret this Court's caselaw to require that any and all acts by the Board are pardons that "blot out" an individual's guilt. In both Hogan and Burr, the Court focused on the implication of the restoration of an individual's civil and political rights with regard to the

1131010

individual's eligibility to run for public office. These cases should not be read to mean that any and all acts of the Board are pardons or that any and all acts of the Board "blot out" individuals' guilt for the named convictions as well as any prior disqualifying convictions, making the individuals "new and innocent" men or women. To the extent that Hogan and Burr can be interpreted to hold that any and all acts by the Board are "pardons," those cases should be overruled.

1131010

MOORE, Chief Justice (dissenting).

This Court granted Louis Murray's petition for a writ of certiorari to review whether the 1980 pardon for his 1975 robbery conviction also made his earlier felony convictions unavailable as predicate acts for sentence enhancement under the Habitual Felony Offender Act, § 13A-5-9, Ala. Code 1975 ("the HFOA"), and for purposes of a felon-in-possession-of-a-pistol conviction, § 13A-11-72(a), Ala. Code 1975. Because I have determined, as explained below, that Murray's sentence was illegal, I dissent from this Court's order quashing the writ.

#### I. Background

In 1983 Murray, then 37 years old, was convicted of armed robbery. See Murray v. State, 453 So. 2d 774 (Ala. Crim. App. 1984). Finding that Murray had three prior felony convictions, the trial court sentenced him under the HFOA to life imprisonment without the possibility of parole.<sup>6</sup> Now 68 years old, Murray seeks review of the denial of his fifth Rule 32,

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<sup>6</sup>At the time of Murray's sentencing in 1983, the HFOA provided that a defendant who had been previously convicted of three felonies and who then was convicted of a Class A felony "must be punished by imprisonment for life without parole." § 13A-5-9(c)(3), Ala. Code 1975.

1131010

Ala. R. Crim. P., petition for postconviction relief. His argument that his sentence is illegal is sufficient to avoid the Rule 32 bars of untimeliness and successiveness. Rule 32.2(b) and (c). "[A] challenge to an illegal sentence is jurisdictional and can be raised at any time." Ginn v. State, 894 So. 2d 793, 796 (Ala. Crim. App. 2004).

At the time of Murray's 1983 armed-robbery conviction, he had four prior felony convictions: receiving stolen property (1966); grand larceny (1974); robbery (1975); and being a felon in possession of a pistol (1981). The "Certificate Granting Restoration of Civil and Political Rights" to Murray, dated July 14, 1980, reads as follows:

"It having been made to appear to the Alabama State Board of Pardons and Paroles that [Murray] was convicted in Montgomery County [in 1975] of robbery, was sentenced to a term of Ten (10) years and was released from incarceration on February 19, 1979, and the term of the maximum sentence has now expired, and

"It further appearing to the Board from the official report of the Parole Supervisor which is a part of the record in this case, and with no further information to the contrary, that the above named has so conducted himself since release as to demonstrate his reformation and to merit restoration of civil and political rights;

1131010

"NOW, in compliance with the authority vested in the State Board of Pardons and Paroles by the Constitution and the laws of the State of Alabama to restore civil and political rights, it is

"ORDERED that all disabilities resulting from the above stated conviction and all prior disqualifying convictions be and they are hereby removed and the civil and political rights of the above named are restored."

(Capitalization in original; emphasis added.)

Murray argues that the 1980 pardon of his 1975 robbery conviction eliminated that conviction as a predicate act for enhanced sentencing. Because the three remaining felonies would still support his enhanced sentence, he further argues that language in the restoration-of-rights certificate exonerated him from all prior felony convictions, not just the 1975 conviction specifically identified in that document. He thus argues that he would have only one prior felony conviction for sentence-enhancement purposes -- the 1981 conviction for being a felon in possession of a pistol. He further argues that the 1981 conviction was improper because the 1980 certificate fully restored his civil rights, including the right to carry a firearm. Thus, as Murray stated in the circuit court: "I stand before Judge Reese today as a first offender felon."

1131010

At the time Murray was sentenced for the 1983 first-degree robbery conviction, the sentencing range for first-degree robbery, a Class A felony, § 13A-8-41(c), Ala. Code 1975, was imprisonment for life or for 10 to 99 years. § 13A-5-6(1), Ala. Code 1975. If a firearm or deadly weapon were used in the commission of the robbery, the minimum sentence was 20 years. § 13A-5-6(4), Ala. Code 1975. Murray thus argues that his sentence of life imprisonment without the possibility of parole is illegal. Alternatively, he argues that, even if the restoration-of-rights certificate is not viewed as a pardon of anything other than the 1975 conviction, the restoration of his civil rights, which applied to "all prior disqualifying convictions," removed the underpinnings of his felon-in-possession-of-a-pistol conviction, thus entitling him, at a minimum, to be resentenced on the basis of two prior felony convictions -- the 1966 and 1974 convictions -- rather than three.<sup>7</sup>

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<sup>7</sup>The phrase "and all prior disqualifying convictions" is not meaningless boilerplate. Other pardons have omitted this phrase. For instance, in a 1991 case, this Court construed a certificate that stated: "'Ordered that all disabilities resulting from the above stated conviction be and they are hereby removed and the civil and political rights of the above named are restored.'" State ex rel. Sokira v. Burr, 580 So. 2d 1340, 1341 (Ala. 1991). That certificate, unlike the one in

## II. Analysis

### A. Effect of the 1980 Pardon on Prior Convictions

Murray's "Certificate Granting Restoration of Civil and Political Rights" does not specifically use the word "pardon." However, the circuit court, the Court of Criminal Appeals, and the State of Alabama as the appellee all construe Murray's restoration certificate, which specifically identifies his 1975 robbery conviction, as a pardon for that conviction. In its remand order of October 25, 2013, the Court of Criminal Appeals noted that Sarah Still, the pardon-unit manager with the Alabama Board of Pardons and Paroles, had transmitted a facsimile to the Montgomery County District Attorney's office "stating that Murray had received a pardon for his 1975 conviction and that '[t]he pardon did not have any restrictions.'"<sup>8</sup> In that facsimile, the pardon-unit manager

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this case, made no mention of removing disabilities from "all prior disqualifying convictions." See also United States v. Swanson, 947 F.2d 914, 915-16 (11th Cir. 1991) (holding that a restoration certificate that also applied to "any prior disqualifying convictions" restored political and civil rights not only for the conviction specified in the certificate but also for a prior conviction).

<sup>8</sup>The Court of Criminal Appeals noted that "'pardoned convictions cannot be used to enhance [a] sentence under the Habitual Felony Offender Act.'" Remand Order (quoting Ex parte Casey, 852 So. 2d 175, 181 (Ala. 2002)).

1131010

specifically identified the "Certificate Granting Restoration of Civil and Political Rights" as a "pardon certificate." The facsimile states: "Please see the attached pardon certificate on Willie James Brown, aka Louis Murray, AIS #109,980. S[ubject] was pardoned on a 1975 Montgomery Co. robbery case. The pardon did not have any restrictions." This cover sheet from the manager of the pardon unit uses the word "pardon" three times to describe Murray's "Certificate Granting Restoration of Civil and Political Rights."

In its order of November 20, 2013, denying on remand Murray's petition for a new sentencing hearing, the circuit court stated: "Petitioner's earlier conviction for Robbery was Pardoned and cannot be used for HFOA purposes." In its subsequent unpublished memorandum of April 25, 2014, on return to remand, the Court of Criminal Appeals stated that Murray had introduced into evidence in his remand hearing "a copy of that pardon." The only such document in the record is the restoration certificate. The Court of Criminal Appeals further stated that the circuit court's finding that Murray had received a full pardon for his 1975 robbery conviction "is supported by the record, and we agree that Murray's 1975

1131010

robbery conviction was fully pardoned and was improperly used for sentence enhancement under the [HFOA]." The State concurs: "The trial court and the Alabama Court of Criminal Appeals correctly held that Murray's pardoned conviction, the 1975 robbery conviction, could not be used to enhance his sentence ...." State's brief, at 9 (emphasis added).

The interpretation that a restoration certificate operates as a pardon finds further support in two controlling opinions of this Court. In Hogan v. Hartwell, 242 Ala. 646, 649, 7 So. 2d 889, 890 (1942), this Court was interpreting "the order of the State Board of Pardons and Paroles restoring to said Hartwell 'all Alabama Civil and Political Rights.'" Responding to the argument that "there was no pardon and that restoration of [appellee's] civil rights was without foundation," the Court stated that "this argument overlooks the broad and comprehensive meaning of the word 'pardon' as found in the authorities to the effect that it is a declaration on record by 'the chief magistrate of a state or country that a person named is relieved from the legal consequences of a specific crime.'" 242 Ala. at 650, 7 So. 2d

1131010

at 891. This statement is consistent with the proposition that a restoration certificate operates as a pardon.<sup>9</sup>

In State ex rel. Sokira v. Burr, 580 So. 2d 1340, 1341 (Ala. 1991), this Court interpreted a certificate that contained restoration language identical to that in Murray's certificate. The certificate in Burr was not styled as a pardon, but instead was entitled "Certificate of Discharge from Parole with Restoration of Civil and Political Rights."<sup>10</sup> This Court referred to that document as a "certificate of pardon," Burr, 580 So. 2d at 1341, and stated that "the pardon, expressly restoring all of Burr's civil and political rights, returned to him each civil and political privilege taken away by his felony conviction." 580 So. 2d at 1345 (emphasis added).

Thus, under this Court's precedents and also under the facts of this case, Murray's restoration certificate pardoned

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<sup>9</sup>In 1980, the Board may have given Murray a certificate restoring rights rather than one also expressly pardoning the offense because he had already served his sentence and thus had no need for relief from the penalty of imprisonment.

<sup>10</sup>The certificate at issue in Burr is in the record on appeal in that case, which is available on microfilm at the Alabama State Law Library.

1131010

not only his 1975 robbery conviction, but also, as stated in the certificate, "all prior disqualifying convictions."

B. The Felon-in-Possession-of-a-Pistol Conviction

Even if Murray's restoration certificate is construed merely to restore civil rights and not to operate as a pardon, he is still entitled to have his felon-in-possession-of-a-pistol conviction disregarded for HFOA purposes. Because the restoration certificate did restore Murray's civil and political rights, including removing "disabilities resulting from ... all prior disqualifying convictions," he was legally entitled to be in possession of a firearm a year after the restoration certificate was executed when he was convicted of being a felon in possession of a pistol.

The right to bear arms is a civil right protected under both the state and federal constitutions. See Art. I, § 26, Ala. Const. 1901; Amend. II, U.S. Const. "Under Alabama law, then, the Board's restoration to [Murray], without express limitation, of 'all civil and political rights' means exactly what it says: It nullifies 'any and all legal incapacities,' including the right to possess firearms." United States v. Swanson, 947 F.2d 914, 918 (11th Cir. 1991) (footnote

1131010

omitted). By contrast the "Certificate of Restoration of Civil Rights" at issue in James v. United States, 19 F.3d 1, 2 (11th Cir. 1994) "expressly grant[ed] the restoration of civil rights 'except the specific authority to possess or own a firearm.'" Interpreting Alabama law, the United States Court of Appeals for the Eleventh Circuit logically concluded that James's "restoration of civil rights excluded the right to possess firearms." Id.

In Sanders v. State, 854 So. 2d 143 (Ala. Crim. App. 2002), a case on all fours with this one on the felon-in-possession-of-a-pistol issue, the Court of Criminal Appeals considered a Rule 32 petition that sought reversal of a 1983 felon-in-possession-of-a-pistol conviction that was based upon a 1969 robbery conviction for which Sanders had been pardoned in 1979. Sanders's felon-in-possession conviction arose from a guilty plea, as did Murray's. Finding that Sanders's claim was jurisdictional and thus not time-barred, the Court of Criminal Appeals remanded the case for an evidentiary hearing "regarding Sanders's allegation that the court was without jurisdiction to accept his guilty plea for possessing a pistol as a violent offender where, before the indictment for the

1131010

offense of possession of a pistol, the Board had formally reinstated Sanders's civil and political rights following his 1969 conviction." 854 So. 2d at 145. The Sanders court also noted that the "possession-of-a-pistol conviction" could not be used for enhancement purposes under the HFOA because the "1969 robbery conviction could not be used as a predicate offense." 854 So. 2d at 144 n.3.

Sanders relied upon United States v. Fowler, 198 F.3d 808 (11th Cir. 1999), which states:

"Alabama law empowers the State Board of Pardons and Paroles to restore the right of a person convicted of a crime of violence to possess a firearm. Without an express limitation on the certificate restoring civil and political rights to Fowler, under Alabama law the restoration of civil and political rights restores the firearm rights limited by § 13A-11-72(a) [, Ala. Code 1975]."

198 F.3d at 811 (emphasis added). Murray's counsel argued this point as follows at the circuit court hearing on Murray's Rule 32 petition:

"[T]his restoration of rights and full pardon with no restrictions at a minimum allowed [Murray] -- it pardoned his 1975 conviction for which it was for and also restored his right to carry a firearm, which would negate his later conviction for carrying a firearm."

1131010

Because Murray's felon-in-possession-of-a-pistol conviction was invalid and his 1975 robbery conviction was pardoned, the 1983 sentencing court had only two prior felonies with which to enhance Murray's sentence: grand larceny (1974) and receiving stolen property (1966). As Murray's counsel argued at the remand hearing in the circuit court: "So it would remove at a minimum those two convictions and leave him with a maximum of two felony convictions." Under the HFOA in effect at that time, the trial court could have sentenced Murray based on two prior felonies to life imprisonment or a fixed term of at least 99 years. § 13A-5-9(b)(3). In that event he would have been eligible for parole.<sup>11</sup>

### III. Conclusion

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<sup>11</sup>The special concurrence seeks to avoid this conclusion by stating that Murray must bring a new and separate Rule 32 proceeding to challenge the legality of his 1981 felon-in-possession-of-a-pistol conviction. See \_\_\_ So. 3d at \_\_\_ n.1. In this proceeding, however, Murray is challenging his 1983 sentence, which depended for its legality upon the validity of the 1981 felon-in-possession conviction. Thus, that conviction is properly at issue in this case. The determination of its validity requires no additional facts but depends completely on the interpretation of the 1980 certificate, which is the issue before us in this case.

1131010

The circuit court, the Court of Criminal Appeals, the pardon-unit manager, and the State of Alabama all concede that Murray received a pardon for his 1975 robbery conviction. The only plausible reading of the record is that the "Certificate Granting Restoration of Civil and Political Rights" is also Murray's pardon certificate. The "and all prior disqualifying convictions" language in that certificate thus eliminates both the 1966 conviction for receiving stolen property and the 1974 conviction for grand larceny as predicate acts for both HFOA purposes and for the felon-in-possession-of-a-pistol statute. Accordingly, Murray, who is serving a sentence of life imprisonment without the possibility of parole, is entitled to be resentenced "as a first offender felon" for his 1983 first-degree robbery conviction and would be eligible for parole. In the alternative, even if the restoration certificate is interpreted only to restore civil rights and not to pardon, Murray should have been sentenced under the HFOA based on two prior felonies rather than three and thus would also be eligible for parole. In either case, "[s]ince the first sentence imposed on [the defendant] was invalid, the trial court had not only the power, but the duty, to sentence [the

1131010

defendant] as required by law." Hughes v. State, 518 So. 2d  
890, 891 (Ala. Crim. App. 1987).