RULE 32
POST CONVICTION REMEDIES

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Madison County Bar Association
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WHAT IS A RULE 32 PETITION?

A Rule 32 Petition is a method by which your client, having exhausted or waived his appeals, can petition to have his conviction set aside.

It is a collateral attack.

It is a new attack. A petition. You have the burden of proof.

It is NOT an appeal. Trust me. It will become an appeal later.

Rule 32 petitions are filed with the trial court who adjudicated the client. (Rule 32.5).

Rule 32 petitions require a filing fee or an in forma pauperis claim. (Rule 32.6(a)).

Rule 32 petitions are winnable!

A RULE 32 SEEKS TO VOID A CONVICTION...PERIOD

Rule 32 petitions seek relief from a conviction.

There are two results:

1) A conviction which is voidable is voided, i.e. the court lacked jurisdiction to even try, much less convict the Defendant. A Rule 32, if won, sets him free.

2) A conviction which was obtained in violation of due process, i.e. ineffective assistance of counsel, is set aside and the Defendant is given a new trial.

Make sure you client understands that a new trial means a new trial. This is important. Many Defendants think this is a ticket to freedom.

GROUNDS FOR A RULE 32 PETITION

A complete list of grounds include:

❑The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief: (Rule 32.1(a)).

❑The court was without jurisdiction to render judgment or impose sentence (Rule 32.1(b)). This one actually has some teeth and is more common than you might think.

❑The sentence imposed exceeds the maximum sentence authorized by law or is otherwise not authorized by law. (Rule 32.1(c).

❑The petitioner is being held in custody after the petitioner's sentence has expired. (Rule 32.1(d)).

❑Newly discovered material facts exist which require that the conviction or sentence be vacated by the court because:

a) the facts relied upon were not known by the petitioner or his counsel at the time of trial or sentencing or in time to file a post trial motion;

b) The facts are not merely cumulative;

c) The facts do not merely amount to impeachment evidence;

d) If these facts had been known at trial the result would have been different (This is important!); and

e) The new facts establish that the petitioner is innocent of the crime for which he was convicted. This is usually the weakest grounds to rely on.

❑Ineffective assistance of counsel such that, but not for the deficient performance of the lawyer the result of the case would have been different.

❑Last, but not least, the petitioner failed to appeal within the prescribed time but for the failure was not his fault.

(See Maples v. Thomas, 565 U.S. ___ (2012), in which an Alabama death row inmate's Rule 32 was filed out of time, dismissed, dismissal upheld, and the SCOTUS said he was not at fault because his attorneys had withdrawn from the case and he didn't know it. The Court said the attorneys had "abandoned" Maples.)

TIME BAR

Rule 32 petitions must be filed within ONE YEAR of the certificate of judgment, if there was

an appeal, or within ONE YEAR of the date of sentencing if the Defendant pleaded guilty and didn't appeal.

If the claim is jurisdictional, the time bar does not apply.

If you file an out-of-time Rule 32 petition and the State doesn't raise the issue of the statute of limitations before the trial court's ruling, it is waived.

Note, the State can raise the time bar at any time prior to the trial court's ruling.

ISSUE PRECLUSION

A Petitioner will not be given relief if his petition is based upon

1) Any issue which may be raised on direct appeal or by a post-trial motion under Rule 24;

2) Any issue which was raised or addressed at trial;

3) Any issue which could have been raised or addressed at trial but was not;

4) Any issue which was raised or addressed on appeal or in previous collateral attacks. (Rule 32.2)

PLEADINGS
SPECIFICITY IS REQUIRED.

Rule 32 pleadings must be plead with SPECIFICITY. Mere allegations and "notice pleading" language is insufficient. You must state the who, what, when, where, how and why's of your petition. (Rule 32.69(b)).

Cite the record with specificity if you're citing the record. If it's a clerk's record, cite is as (C-Page #). If it's the transcript of the reporter, cite it as (R-Page #).

If you're quoting someone, quote the person verbatim and cite the place in the record where the quote occurs.

No mere conclusions of fact or law are sufficient.

The fastest way to lose your Rule 32 is to use notice pleading language and mere conclusions. The judge can deny the Rule 32 petition without a hearing if the petition doesn't contain specific recitations of facts. The judge needs only to cite that there was no specificity of facts and you're on your way to the appeals courts to try to prove the judge abused his discretion, or, better yet, file an amended petition and be specific.

VERIFIED PLEADING

Rule 32 petitions MUST be signed by the CLIENT and verified and notarized. (Rule 32.6 (a)). The Rule says it can be verified with the attorney's notarized signature, but I make my clients sign it. I'm not the party. They are.

The affidavit must be plead with SPECIFICITY. I drag my mouse and copy the allegations of the pleadings into the affidavit in entirety, with grammar changes to make it an affidavit, and have the client sign the petition, which I notarize.

PROPER FILING AND RESPONSE

The PETITIONER must pay a filing fee. (Rule 32. 6(a)),

or

File for in forma pauperis status. The date of filing is the date of the filing of the petition and the payment of the fee or the declaration of in forma pauperis status, not the day it is granted.

No $200.00 or in forma pauperis request, you risk dismissal. Courts have said you can "amend" and pay the fee or file the in pauperis request.

The PETITIONER must serve a copy of the Petition upon the State/Respondent. (Rule 32. 6 (a)).

The PETITION case number is the trial CC case number with a .60 suffix on it. This denotes this is your Rule 32 petition and not some post-judgment motion.

The State/Respondent SHALL respond to the petition within 30 days of service of the Rule 32 petition. (Rule 32.7)

Some judges will order the State doesn't need to respond. I've run into this. I made a mistake once and forced the State to respond. I should have held my cards. Why?

1) Let the State not respond. Then your facts are taken as undisputed;

2) If you want to force a response: File a petition for writ of mandamus for the Court of Criminal Appeals to order the trial judge to require the State to respond. This is a good tactic when the State has hidden evidence or failed to turn over discovery.

APPOINTMENT OF COUNSEL

Rule 32.7© provides:
"Appointment of Counsel. If the court does not summarily dismiss the petition, and if it appears that the petitioner is indigent or otherwise unable to obtain the assistance of counsel and desires the assistance of counsel, and it further appears that counsel is necessary to assert or protect the rights of the petitioner, the court shall appoint counsel."

You'll see appointed counsel on inmate petitions, mostly.

Good luck with that one.

The "right to appointed counsel" is discretionary. Trial courts will fight you on this one.

You might also see appointed counsel on capital cases. All others pay cash.

BURDEN OF PROOF

The PETITIONER has the burden of proving the allegations in the Rule 32 petition.

Remember, if the STATE/RESPONDENT fails to answer, the facts contained in the PETITION are deemed undisputed.

The STATE has the burden of proving if an issue is precluded.

DISCOVERY

You have the right to conduct discovery in a Rule 32 petition.

EVIDENCE/EXPERTS

The PETITIONER has the burden of proof.

If your issue is ineffective assistance of counsel, hire an expert. An expert is any experienced trial lawyer you know who can testify cogently about the grounds of your petition.

In ineffective assistance of counsel cases, you must have a lawyer opine that the lawyer at trial flat stunk, and was so ineffective that if he had been effective there would have been a different result.

It is not an argument about strategy. It's an argument about competency.

DO NOT handle Rule 32 petitions if you are one of those Rotary Club, Kiwanis Club, join-everything club kind of lawyers who wants to be liked. Rule 32 petitions will make you unpopular. You've got to be rather brutal to win a Rule 32 petition. You've got to prove the trial lawyer failed to act when he should have acted or acted when he should have remained silent or failed to object when he should have or objected when he should have shut up, etc.

IF YOU'RE THE TARGET OF A RULE 32

You did your best for Client X at trial. You lost. Client X appealed. Conviction is affirmed.

Now you're in the cross-hairs. Client X has filed a Rule 32.

What do you do? First, breathe. A Rule 32 doesn't affect your malpractice insurance. It doesn't affect your standing among your fellow lawyers. It doesn't mean you have to worry about a bar complaint or any censure.

A Rule 32 is merely a tactic by Client X to get a new trial or the conviction voided.

You WILL be called to testify. Smile. Be affable. And here's the secret: Answer with "you're right. I could've done that better." Here's why:

The State has to defend the Rule 32 petition. The State comes to the defense attorney and says, "We'll defend you. You did a great job."

The State wants to prop you up to make sure it doesn't lose the Rule 32 hearing, so you are now their star witness.

Remember, a Rule 32 claim voids the attorney/client privilege. At this point, you can testify to anything your client said during the representation. But, should you?

So, the State wants you to be their star witness.

But, you're an attorney. Your first responsibility is to your client, right? It's not about you. It's about the client's right to attack his conviction.

So, as you are questioned, if the petitioner has an issue and facts which show you made a mistake during your representation, simply say, "I could've done that better." Admit your mistakes. We all make them. Be honest.

I've had two Rule 32 petitions filed against me in 18 years of practice. Both times other lawyers came in as experts and talked about me like I was stupid.

In both cases, I came in and testified truthfully.

One was a case where a man was convicted of sodomizing his two children. I'd gotten two hung juries and my client was convicted after the third jury trial. The client claimed I was ineffective. His Rule 32 lawyer savaged me all day long during the hearing and focused on a point in the trial where he felt my cross-examination of a witness was lacking. I simply said, "You're right. I could have done that better." The judge denied the Rule 32 petition because the Court said my cross-examination was cogent and did not constitute ineffective assistance.

The other case was a drug distribution case. The client was convicted as a habitual offender and sentenced to life plus 5 plus 5. The plus 5s were for selling in a housing project next to a school. During the trial we presented an entrapment defense. I had explained to my client that he had to testify if we used an entrapment defense. When it came time for the Client to testify, he froze. I took him into the hallway and explained to him that he had to testify because an entrapment defense has the element that you don't deny that you sold the drugs, but you were entrapped into it. He refused to testify.

I went in, asked for a mistrial on the grounds that my client had misunderstood that he had to testify and the judge denied it. The jury later convicted my client.

During the Rule 32 hearing, the lawyer tried to make me seem incompetent, of course. I testified truthfully that my client had insisted on the entrapment defense and froze when it came time to testify. I admitted that I "could have done that better," agreeing with the lawyer that I should never have allowed my client to use the entrapment defense if there was a chance he'd freeze up.

In BOTH cases, the Rule 32 petitions were denied and in BOTH cases the appellate courts upheld the denials.

My practice did not suffer one whit as a result of either petition.

So, aside from Rule 32 petitions being a giant inconvenience for the lawyer accused of being ineffective, there's no threat to your practice.

My opinion is you always side with the client. If he wins a new trial, you've upheld the oath you took to defend your clients.

APPEAL

Any party may appeal the decision of a circuit court according to the procedures of the Alabama Rules of Appellate Procedure to the Court of Criminal Appeals upon taking a timely appeal as provided in Rule 4, Alabama Rules of Appellate Procedure. Any party may appeal a decision of a district or municipal court according to existing procedure. (Rule 32.10(a)).

PETITIONER RELEASE

The petitioner shall not be released on bond pending appeal by either party. Release of the petitioner on bond pending a retrial after an order requiring retrial has become final, or after the time for filing an appeal from such an order has lapsed, shall be governed by the laws and rules governing release on bond pending an initial trial. (Rule 32.10 (b)).

APPELLATE COURT STANDARD OF REVIEW

The standard for reviewing a circuit court's judgment denying a Rule 32 petition is as follows:

"[When the facts are undisputed and an appellate court is presented with pure questions

of law, that court's review of ruling in a post-conviction proceeding is de novo; however, where there are disputed facts in a post-conviction proceeding and the circuit court resolves those disputed facts, the standard of review on appeal is whether the trial judge abused his discretion when he denied the petition." Ex parte Woods, 957 So.2d 533 (Ala. 2006); Jackson v. State, 963 So.2d 150 (Ala.Crim.App. 2006); In Hyde v. State, 950 So.2d 344 (Ala.Crim.App. 2006)

"[When reviewing a circuit court's denial of a Rule 32 petition we apply an abuse-of-discretion standard." Davis v. State, __So.2d__, 2008 WL 902884 (Ala.Crim.App. 2008), citing Elliott v. State, 601 So.2d 1118, 1119 (Ala.Crim.App. 1992).

The "plain-error standard of review does not apply in Rule 32 petitions." Hill v. State, 695 So.2d 1223 (Ala.Crim.App. 1997); Neeley v. State, 642 So.2d 494 (Ala.Crim.App. 1993). Boyd v. State, 913 So.2d 1113, 1122 (Ala.Crim.App. 2003); Ex parte White, 792 So.2d 1097, 1098 (Ala. 2001); Elliott v. State, 601 So.2d 1118, 1119 (Ala.Crim.App. 1992).

GROUNDS FOR REMAND

The bulk of appeals court remands are for these reasons:

1) Petition not barred by time limitations or preclusion grounds. Judges will often mistakenly rule a petition is time barred when the claim is jurisdictional, where there is no time bar.

2) Petition is not procedurally barred. Judges often will cite this in a summary dismissal of the petition without a hearing, only to have the appeals courts remand the petition for hearing.

3) The trial judge failed to enter an order setting out reasons for a summary dismissal and the facts on which the summary dismissal is based. The judge has to be specific, too.

4) The trial judge summarily dismissed the petition without an evidentiary hearing where grounds as specifically plead clearly showed a meritorious claim.

5) The trial judge held an evidentiary hearing but failed to make written findings of fact stating the Court's ground for denial of relief for each claim. Judge will often summarize, rather than point-by-point deny each claim. This will get the case remanded.

6) The trial judge failed to make written findings of fact in a claim of ineffective assistance

of counsel. The trial judge is required to make a ruling as to the specific issues relating to the claim of ineffective assistance.

7) The trial judge abused his discretion by not allowing a Rule 32 petition to be amended.

CASE LAW

SUBJECT MATTER JURISDICTION

Absent payment of the filing fee or approval of the in forma pauperis declaration, the circuit court does not acquire subject matter jurisdiction. The refusal of the circuit court to accept a petition is not a final judgment and cannot therefore, support an appeal. Mandamus, and not appeal, is the proper method by which to compel the circuit court to determine whether to authorize the petitioner to proceed in forma pauperis. Goldsmith v. State, 709 So.2d 1352 (Ala.Crim.App.1997), cited in Goodwin v. State 720 So.2d 1050 (Ala.Crim.App. 1998).

The circuit court lacked subject-matter jurisdiction to consider petition for postconviction relief, where the circuit court did not grant petitioner's request to proceed in forma pauperis and the petitioner did not pay the filing fee. Smith v. State, 918 So.2d 141 (Ala.Crim.App. 2005), citing Ex parte McWilliams, 812 So.2d 318 (Ala. 2001); Ray v. State, 895 So.2d 1063 (Ala.Crim.App. 2004); Ex parte St. John, 805 So.2d 684 (Ala. 2001); Goldsmith v. State, 709 So.2d 1352 (Ala.Crim.App. 1997).

CERTIFICATE OF WARDEN OR PRISON OFFICER

A prison inmate was not entitled to proceed in forma pauperis with respect to his petition for postconviction relief, or to waiver of filing fee on petition, because he failed to provide the court with a certificate of the warden or prison official of the correctional facility in which he was incarcerated showing the balance of his inmate account for 12 months preceding the filing of his post-conviction petition, as required by Rule 32.6(a), Ala.R.Crim.P. 32(6). Ex parte Washington, 855 So.2d 1138 (Ala.Crim.App. 2003).

ACCEPTANCE OF IN FORMA PAUPERIS APPLICATION OR RECEIPT OF FILING FEE

Remand to the circuit court was required for determination of whether a postconviction relief petitioner paid the circuit court filing fee or whether the circuit court granted the petitioner's request to proceed in forma pauperis, Rule 32.6 Ala.R.Crim.P., Broadway v.

State, 881 So.2d 1068 (Ala.Crim.App. 2003).

Review of record shows it is unclear whether the circuit court had jurisdiction to rule on the petition, case remanded for circuit court to make specific written findings as to whether in forma pauperis granted or filing fee paid. Maxwell v. State, 897 So.2d 426 (Ala. Crim. App.2004).

Remanded to the Circuit court to make specific, written findings as to whether the it actually granted the petitioner's request to proceed in forma pauperis or whether the petitioner paid the filing fee. Broadway v. State, 881 So.2d 1068 (Ala.Crim.App. 2003) and Jackson v. State, 854 So.2d 157 (Ala.Crim.App. 2002),

Trial court's order requiring an inmate to pay the filing fee for his first petition for postconviction relief, which was issued in apparent response to inmate's filing of second petition for postconviction relief, was untimely. The order was issued nine months after the trial court had summarily dismissed the first petition, rather than upon dismissal of the first petition. Ex parte Ward, 957 So.2d 449 (Ala. 2006)

"Access to the courts is a fundamental tenet of our judicial system; legitimate claims should receive a full and fair hearing no matter how litigious the plaintiff may be. In re Oliver, 682 F.2d 443, 446 (3rd Cir.1982)." See also Ex parte Coleman, 728 So.2d 703 (Ala.Crim.App. 1998), and White v. State, 695 So.2d 241 (Ala.Crim.App. 1996).

DENIAL OF REQUEST FOR PROCEED IN FORMA PAUPERIS

The Court of Criminal Appeals will issue a writ of mandamus directing a trial court to state its reasons for denying a prisoner's request to proceed in forma pauperis on his postconviction relief petition. Ex parte Amerson, 849 So.2d 1001 (Ala.Crim.App. 2002).

VENUE/JURISDICTION

Rule 32.6 (b) requires hearing by the court of original conviction because the circuit judge has personal knowledge of the facts underlying the allegations in the petition, he may deny the petition without further proceedings so long as he states the reasons for the denial in a written order." Sheats v. State, 556 So.2d 1094, 1095 (Ala.Crim.App. 1989), cited in Gilmore v. State, 937 So.2d 547 (Ala.Crim.App. 2005).

The judge who presided over the trial or other proceedings and observed the conduct of the attorneys at the trial or other proceedings need not hold a hearing on the effectiveness

of those attorneys based on conduct that he observed. Ex parte Hill, 591 So.2d, 462, 463 (Ala. 1991).

The circuit court was not the court where the defendant was convicted, thus court lacked authority or jurisdiction to dispose of a petition for post-conviction relief and should have transferred the case to the county where the conviction occurred, Sloan v. State, 780 So.2d 805 (Ala.Crim.App. 2000).

If a postconviction petition is filed in the wrong court, the circuit court in which petition is filed must transfer the petition to circuit court of original conviction, rather than dismiss the petition. Barker v. State, 766 So.2d 988 (Ala.Crim.App. 2000).

Upon determining that a petition for writ of habeas corpus should have been pursued as a petition for postconviction relief in the court where the petitioner was convicted, the trial court should have transferred the petition to the court of original conviction, rather than dismissing it. Rule 32.5 Ala.R.Crim.P., Long v. State, 673 So.2d 856 (Ala.Crim.App. 1995).

AMENDED PETITIONS

When a post-conviction petition styled as a petition for writ of habeas corpus is filed and the allegations raised in the petition are cognizable in a proceeding under Rule 32, Ala.R.Crim.P., the cause should be entertained in the court of original conviction and the petitioner should be given the opportunity to file a petition in the proper form as required by Rule 32.6(a).” Glover v. State, 615 So.2d 1331 (Ala.Crim.App. 1993); Drayton v. State, 600 So.2d 1088 (Ala.Crim.App. 1992).

In Smith v. State, 918 So.2d 141 (Ala.Crim.App. 2005), [T]he “second sentence in Rule 32.6(a) specifically contemplates that defects in the form of the petition are not grounds for dismissal of the petition but are readily curable by amendment, and both the Supreme Court and this Court have held that defects in the form of a Rule 32 petition in no way implicate the jurisdiction of the circuit court.” In Smith v. State, 918 So.2d 141 (Ala.Crim.App. 2005). See, e.g., Davis v. State, 784 So.2d 1082 (Ala.Crim.App.2000); Norwood v. State, 770 So.2d 1113 (Ala.Crim.App. 2000); Young v. State, 667 So.2d 141 (Ala.1995).

SUFFICIENCY OF PLEADING

Once a petitioner has met his burden of pleading so as to avoid summary disposition pursuant to Rule 32.7(d), Ala.R.Crim.P., he is then entitled to an opportunity to present

evidence in order to satisfy his burden of proof. Murray v. State, 922 So.2d 961 (Ala.Crim.App. 2005), quoting Ford v. State, 831 So.2d 641 (Ala.Crim.App. 2001). Tolbert v. State, 953 So.2d 1269 (Ala.Crim.App. 2005) [quoting Boyd v. State, 746 So.2d 364, 406 (Ala.Crim.App. 1999).

it is not the pleading of a conclusion which, if true, entitle[s] the petitioner to relief. It is the allegation of facts in the pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief; the petitioner is then entitled to an opportunity, as provided in Rule 32.9, to present evidence proving those alleged facts."Lancaster v. State, 638 So.2d 1370, 1373 (Ala.Crim.App. 1993).

Petitioner failed to satisfy the specificity and pleading requirements under the criminal rules governing postconviction procedure, and, thus, the trial court was "under no obligation to conduct an evidentiary hearing on his petition," because the defendant "failed to cite any law that would have prevented the circuit court from merely receiving the indictment, as opposed to proceeding with the case, pending appeal from juvenile court." Baker v. State, 907 So.2d 465 (Ala.Crim.App. 2004),

DISMISSAL OF MERIT-LESS PETITIONS

Trial court can proceed to address the issues and dispose of the petition where the petition clearly does not have merit. Ex parte Maddox, 662 So.2d 915 (Ala. 1995)

Rule 32.7(d), Ala.R.Crim.P. also takes precedence, in some cases, over the Rule 32.6(a), Ala. R.Crim.P. requirement that the petition be filed on the "proper form." "Our blind adherence to the holding of Drayton v. State, 600 So.2d 1088 (Ala.Crim.App. 1992), is a literal exaltation of form over substance. It is ridiculous to remand this cause so that the appellant will have the opportunity to file a petition in the proper form that will be promptly dismissed. . . ." 662 So.2d at 915.

It would be an exaltation of form over substance to remand [this] case to the circuit court so that court could return the petitions to the appellant and so the appellant could refile three separate petitions that, for the reasons set forth above, will be promptly dismissed. Heulett v. State, 842 So.2d 741 (Ala.Crim.App. 2002)

DATE OF FILING OF PETITION BY INMATE

A Rule 32 petition was deemed filed on the date it was placed in the prison mail system to be mailed to the circuit court clerk, despite the fact that the date stamp supplied by the

clerk indicated the petition was not “filed” until six months after the date on which it was mailed. Rash v. State, 968 So.2d 552 (Ala.Crim.App. 2006).

RULE 32 FILING WHILE DIRECT APPEAL PENDING

When a defendant files a Rule 32 petition while a direct appeal is pending in the Court of Criminal Appeals, The Court will notify the circuit court to hold the Rule 32 petition in abeyance pending the outcome of the appeal. "Or the appellate court may remand, thus staying the appeal of the petitioner's conviction and transferring jurisdiction to the circuit court to adjudicate the Rule 32 petition. After adjudication, a return to remand would be submitted to this court, and the parties would be allowed to submit issues for review of the circuit court's action on the Rule 32 petition." Barnes v. State, 621 So.2d 329 (Ala. Crim. App. 1992).

the Court of Criminal Appeals granted Wilson's motion, stayed the appeal, and transferred jurisdiction of the cause to the circuit court for adjudication of the Rule 32 petition. The Court ordered the circuit court to dispose of the petition, and ordered the court reporter to supplement the record on appeal with a transcript of the Rule 32 proceedings. Wilson v. State, 830 So.2d 765 (Ala.Crim.App.2001), (citing Barnes.)

OUT OF TIME APPEAL

“It is clear from the wording of Rule 32.1(f), that the out-of-time- appeal provision applies only to situations where the notice of appeal is untimely.” State v. Carruth, __So.2d__, 2008 WL 2223060 (Ala.Crim.App. 2008).

VERIFICATION

”The failure to comply with the verification requirement provided in Rule 32.6(a) Ala.R.Crim.P is not a jurisdictional defect that deprives the trial court of subject matter jurisdiction.” Smith v. State, 918 So.2d 141 (Ala.Crim.App. 2005).

Failure to comply with the verification requirements of Rule 32.6(a) Ala.R.Crim.P. was not a defect that operates to deprive the circuit court of subject-matter jurisdiction to consider the merits of a Rule 32 petition. The Court noted that, “permitting a verification defect to be cured by amendment without requiring the dismissal of the petition for lack of jurisdiction serves to promote the primary policy objectives underlying the verification requirement ensuring that the averments in the petition are based on merit and truth and protecting against the filing of frivolous petitions-without sacrificing judicial economy.”

Smith v. State, 918 So.2d 141 (Ala.Crim.App. 2005), overruling to that extent Kelley v. State, 911 So.2d 1125 (Ala.Crim.App. 2004)4, Coleman v. State, 911 So.2d 1099 (Ala.Crim.App. 2004)5; and Thornton v. State, 859 So.2d 458 (Ala.Crim.App. 2003).

Petition was not properly verified as required by Rule 32.6(a), Brooks v. State, 929 So.2d 491 (Ala.Crim.App. 2005

Failure to comply with the verification requirements of Rule 32.6(a) was not a defect that would deprive the circuit court of subject-matter jurisdiction to consider the merits of the petition, and that the defect is waived if not raised. Smith v. State, 918 So.2d 141 (Ala.Crim.App. 2005).

Issue of whether the petition by capital murder petitioner was properly verified was waived because the State did not object to the lack of proper verification. Loggins v. State, 910 So.2d 146 (Ala.Crim.App. 2005).

JURISDICTIONAL ISSUES

RIGHT TO COUNSEL

Postconviction petitioner's claim that he was arraigned without his counsel present was a jurisdictional claim not subject to the procedural bars set forth in the Rules of Criminal Procedure. Castillo v. State, 925 So.2d 284 (Ala.Crim.App. 2005).

JURY NOT SWORN

A claim that the jury venire and the petit jury were not sworn is a jurisdictional issue, because a verdict rendered by jurors who have never been sworn is a nullity. Barclay v. State, __So.2d__, 2008 WL 902887 (Ala.Crim.App. 2008); Ex parte Benford, 935 So.2d 421 (Ala.Crim. App. 2006); Brooks v. State, 845 So.2d 849, 850-851 (Ala.Crim.App. 2002).

"It cannot be presumed from a silent record that the jury was sworn; there must be in the record some affirmative showing that the oath was administered to the jury." Barclay v. State, __So.2d __, 2008 WL 902887 (Ala.Crim.App. 2008) citing Ex parte Deramus, 721 So.2d 242 (Ala. 1998).

ILLEGALLY SENTENCED

The contention that the sentence exceeds the maximum authorized by law raised a

jurisdictional issue. Steele v. State, 911 So.2d 21, 31 (Ala.Crim.App. 2004). “When a sentence is clearly illegal or is clearly not authorized by statute, the defendant does not need to object at the trial level in order to preserve that issue for appellate review.” English v. State 954 So.2d 1136 (Ala.Crim.App. 2006); Hunt v. State 659 So.2d 998 (Ala.Crim.App. 1994); Ex parte Brannon, 547 So.2d 68 (Ala.1989).

A challenge to an illegal sentence is ‘not precluded by the limitations period or by the rule against successive petitions. Jones v. State, 724 So.2d 75, 76 (Ala.Crim.App.1998).

An illegal sentence can be challenged at any time, because when a trial court imposes an illegal sentence, it has exceeded its jurisdiction and the sentence is void. Henderson v. State, 895 So.2d 364, 365 (Ala.Crim.App. 2004).

Defendant's claim that the trial court was without jurisdiction to sentence him as a habitual felony offender after he was convicted of child abuse (a misdemeanor offense) was a jurisdictional claim not subject to the time bar of the postconviction relief rule. Mosley v. State, __So.2d__ 2007 WL 2459379 (Ala.Crim. App. 2007).

HABITUAL FELONY ACT ENHANCEMENT

Postconviction petitioner’s claim that the record did not affirmatively reflect that he was sentenced under the Habitual Felony Offender Act was procedurally barred, because the claim did not have jurisdictional implications, and it was not raised on appeal. Murray v. State, 922 So.2d 961 (Ala.Crim.App. 2005). See also, Pilgrim v. State, 963 So.2d 697 (Ala.Crim.App. 2006).

Petitioner was entitled to a hearing on his second petition for post-conviction relief alleging that the 15-year sentence imposed for second-degree theft of property exceeded the maximum sentence authorized by statute, despite the State's contention that the sentence was properly imposed pursuant to the Habitual Felony Offender Act and that the petition was successive. The statute authorized a maximum sentence of ten years for the defendant's offenses, and the record contained no indication that defendant was sentenced as a habitual felony offender. Barnes v. State, 708 So.2d 217 (Ala.Crim.App. 1997),

“Rule 32. 1(b) provides for post-conviction relief where the court was without jurisdiction to render judgment or to impose sentence. “A claim of a lack of jurisdiction to render judgment or to impose sentence is not precluded as a basis for relief by Rule 32.2, even though the question of jurisdiction could have been but was not raised at trial or on appeal.” Barnes v. State, 708 So.2d 217 (Ala.Crim.App. 1997)

DOUBLE JEOPARDY CLAIM

A claim, raised in defendant's fourth petition for post-conviction relief, that the defendant's convictions for both felony murder and the underlying felony offense of robbery violated the constitutional guarantee against double jeopardy, which was raised in defendant's fourth petition for post-conviction relief, was not subject to preclusion because it implicated the subject matter jurisdiction of the trial court. Edwards v. State, 907 So.2d 1077 (Ala.Crim.App. 2004).

NO CRIMINAL OFFENSE

Petitioner's claim that the offense of "attempted robbery" did not exist under Alabama law, raised a jurisdictional issue, and therefore, the petitioner's post-conviction claim that the trial court lacked jurisdiction to accept his guilty plea to a nonexistent offense was not subject to procedural bar for having failed to raise the claim at trial or on direct appeal. Conner v. State, 955 So.2d 473 (Ala.Crim.App. 2006).

Evidence is not newly discovered, for purposes of a post-conviction relief claim, where the accused knew of the evidence but did not mention it to his counsel. Woods v. State, 957 So.2d 492 (Ala.Crim.App. 2004).

A capital murder defendant who alleged in a petition for post-conviction relief that he was entitled to a new trial based on newly discovered evidence, specifically that newly discovered material facts proved that the gun recovered from his mother's home was not the gun used in the murders, was not entitled to relief. The Court of Criminal Appeals held that evidence presented at the evidentiary hearing was cumulative to the evidence that was presented at trial and, thus, would not have changed the outcome of the trial. Rules 32.1(e) and 32.3 Ala.R.Crim.P., Hinton v. State, __So.2d.__ 2006 WL 1125605 (Ala.Crim.App. 2006)

A party who files a petition for post-conviction relief based on newly discovered evidence cannot go back after the trial to secure what he considers to be a more qualified expert. Allowing a party to do so would be contrary to the postconviction relief requirement that evidence not be merely cumulative to facts that were known. Rule 32.1(e)(2) Ala.R.Crim.P., Hinton v. State, __So.2d.__, 2006 WL 1125605 (Ala.Crim.App. 2006).

A post-conviction claim that the State withheld exculpatory evidence was procedurally barred where the defendant proffered no facts showing that the claim was based on newly discovered evidence and the claim could have been raised at trial and on direct appeal. Madison v. State, __So.2d.__, 2006 WL 2788983 (Ala.Crim.App. 2006).

SUCCESSIVE PETITIONS

"We now interpret Rule 32.2(b) as federal courts interpret habeas corpus petitions to mean that new claims in subsequent petitions are barred as being successive unless 'the petitioner shows both that good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice. 'Rule 32.2(b) Ala.R.Crim.P." Whitt v. State, 827 So.2d 869 (Ala.Crim.App. 2001), overruled Blount v. State, 572 So.2d 498 (Ala.Crim.App. 1990). not successive unless a prior petition is decided

EXCEPTIONS TO ISSUE PRECLUSION

JURISDICTIONAL CLAIMS

Jurisdictional claims are not 'precluded by the limitations period or by the rule against successive petitions.' Coleman v. State 927 So.2d 883 (Ala.Crim.App. 2005) Grady v. State, 831 So.2d 646, 648 (Ala.Crim.App. 2001), quoting Jones v. State, 724 So.2d 75, 76 (Ala.Crim.App. 1998)."

The petitioner raised nine claims in his Rule 32 petition but, because the petitioner's claim was filed outside the statutory limitations period provided in Rule 32.2 ©, the Court of Criminal Appeals could only consider the jurisdictional claim that the trial court was without jurisdiction to render the judgment or to impose the sentence and that the sentence imposed exceeded the maximum authorized by law). Edmond v. State, 954 So.2d 608 (Ala.Crim.App. 2006).

NON-JURISDICTIONAL CLAIMS

Insufficiency of evidence to support the defendant's guilt beyond a reasonable doubt pursuant to § 13A- 5-42, applicable to capital cases, "is a nonjurisdictional defect that, when adequately preserved in the trial court, may, despite [the] guilty plea" . . . "be raised on direct appeal." In Ex parte Booker __ So.2d.__, 2008 WL 1838299 (Ala. 2008), overruling Elder v. State, 494 So.2d 922 (Ala.Crim.App. 1986), Davis v. State, 682 So.2d 476 (Ala.Crim.App. 1995), Benton v. State, 887 So.2d 304 (Ala.Crim.App. 2003), and Cox v. State, 462 So.2d 1047 (Ala.Crim.App. 2003).

STATUTE OF LIMITATIONS

One-year limitations period governing petitions for post-conviction relief was not a jurisdictional bar; rather, the limitations period was an affirmative defense that could be waived if not raised. Ex parte Ward, __So.2d.__, 2007 WL 1576054 (Ala. 2007),

FILING OF PETITION OF IN FORMA PAUPERIS

Date of filing is the date when in forma pauperis petition was submitted, not when it was granted. Hyde v. State, 950 So.2d 344 (Ala.Crim.App. 2006), overruling Clemons v. State, __So.2d.__, 2003 WL 22047260 (Ala.Crim.App. 2004).

INEFFECTIVE ASSISTANCE OF COUNSEL.

"To sufficiently plead an allegation of ineffective assistance of counsel, a Rule 32 petitioner not only must 'identify the [specific] acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment,' Strickland v. Washington, 466 U.S. 668, 690 [,104 S.Ct. 2052, 8 L.Ed.2d 674] (1984), but must also plead specific facts indicating that he or she was prejudiced by the acts or omissions, i.e., facts indicating that there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different. A bare allegation that prejudice occurred without specific facts indicating how the petitioner was prejudiced is not sufficient." Rule 32.6(b) Ala.R.Crim.P. Madison v. State, __So.2d __, 2006 WL 2788983 (Ala.Crim.App. 2006).

Trial counsel are presumed effective. In reviewing claims of ineffective assistance, the standard of review is the Strickland v. Washington, 466 U.S. 668 (1984), standard requiring the petitioner to show "1) that counsel's performance was deficient; and 2) that the petitioner was prejudiced by the deficient performance." Davis v. State, __So.2d __, 2008 WL 902884 (Ala.Crim.App. 2008).

"To sufficiently plead an allegation of ineffective assistance of counsel, a Rule 32 petitioner not only must 'identify the [specific] acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment,' Strickland v. Washington, 466 U.S. 668, 690, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), but also must plead specific facts indicating that he or she was prejudiced by the acts or omissions, i.e., facts indicating 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' 466 U.S. at 694, 104 S.Ct. 2052. A bare allegation that prejudice occurred without specific facts indicating how the petitioner was prejudiced is not sufficient." McNabb v. State __So.2d__, 2007 WL 2459405 (Ala.Crim.App.

2007).

INEFFECTIVE COUNSEL AND INVOLUNTARY GUILTY PLEA

It is well settled that claims of ineffective assistance of counsel and involuntary guilty plea may be presented for the first time in a timely filed Rule 32 petition. Murray v. State, 922 So.2d 961, 965 (Ala.Crim.App. 2005), cited with approval in Johnson v. State, __So.2d __, 2007 WL 2459965 (Ala.Crim.App. 2007).

Claims of ineffective assistance of counsel raised for the first time in his postconviction petition were not procedurally barred. The defendant did not file a direct appeal, therefore, his postconviction petition was the first opportunity to challenge counsel's performance. Kelley v. State, __So.2d.__ 2007 WL 1866749 (Ala.Crim.App. 2007)

BURDEN OF PROOF

At the pleading stage, a petitioner must provide “a clear and specific statement of the grounds upon which relief is sought. Rule 32.6(b), Ala.R.Crim.P. Once a petitioner has met the burden of pleading so as to avoid summary disposition pursuant to Rule 32.7(d), Ala.R.Crim.P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof.” Ford v. State, 831 So.2d 644 (Ala.Crim.App. 2001), cited with approval in Kelley v. State, __So.2d__, 2007 WL 1866749 (Ala.Crim.App. 2007).

"The petition must contain a clear and specific statement of the grounds upon which relief is sought including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings." Boyd v. State, 913 So.2d 1113 (Ala.Crim.App. 2003). “The burden of pleading under Rule 32.3 and Rule 32.6(b) is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b).” 913 So.2d 1113 at 1125 (Ala.Crim.App. 2003).

Claim challenging lethal injection as a method of execution did not meet specificity requirements of the Rule of Criminal Procedure and the pleading requirements of the rule governing burden of proof. The court concluded that the “defendant's argument was largely speculative in nature and was replete with vague and hypothetical allegations that the method could cause pain, and the defendant did not actually allege that the execution

procedure, if properly performed, caused unacceptable or unconscionable level of pain." McNabb v. State, __So.2d__, 2007 WL 2459405 (Ala.Crim.App. 2007),

It is not the pleading of a conclusion in a petition for postconviction relief which, if true, entitles the petitioner to relief, it is the allegation of facts in the pleading which, if true, entitle a petitioner to relief. Tolbert v. State, 953 So.2d 1269 (Ala.Crim.App. 2005).

PROSECUTOR/STATE'S RESPONSE TO CLAIMS

The Court explained that due process required the State to plead the procedural bars that it maintains apply to the claims in a Rule 32 petition, to give "the petitioner the notice he needs to attempt to formulate arguments and present evidence to 'disprove [the] existence [of those grounds] by a preponderance of the evidence.'" Because the State's compliance with Rule 32.3 is mandatory, if the State fails to comply with the rule, it waives application of the procedural bars and an appellate court cannot sua sponte apply the procedural bars to claims in the petition, unless "exceptional circumstances" are present. Ex parte Rice, 565 So.2d 606 at 608 (Ala. 1990). See also, Nicks v. State, 783 So.2d 895 (Ala.Crim.App. 1999).

Procedural bars to postconviction relief contained in criminal procedure rules are not jurisdictional, and, thus, they can be waived. Only in extraordinary circumstances can such waiver be overcome by an appellate court acting sua sponte. Rule 32.2(a) Ala.R.Crim.P. The State can avoid most of the issues created by an appellate court's sua sponte application of a Rule 32 procedural bar by exercising due diligence and care when answering a postconviction petition." Ex parte Clemons, __So.2d.__, 2007 WL 1300722 (Ala. 2007), abrogating Davis v. State, __So.2d __, 2006 WL 510508 (Ala. 2006).

Note: In McNabb v. State, __So.2d __, 2007 WL 2459405 (Ala.Crim.App. 2007), the Court of Criminal Appeals concluded that the appellate court's sua sponte application of the pleading requirement in Rule 32.6(b) did not conflict with the Alabama Supreme Court's holding in Ex parte Clemons, __So.2d__ 2007 WL 1300722 (Ala. 2007). This conclusion was based on the following distinction: "Because Rule 32.3 limits the State's burden of pleading to 'grounds of preclusion,' and [we note that] only those provisions in Rule 32.2 entitled 'Preclusion of Remedy' fall within such a description, the pleading requirement in Rule 32.6(b), and Rule 32.7(d) governing summary disposition do not fall within the 'Preclusion of Remedy' as discussed in Ex parte Clemons."

HARMLESS ERROR

Prosecutor's failure to file a response to the defendant's petition for post-conviction relief was held to be 'harmless error', on the basis that the facts supporting the grounds for precluding the defendant from obtaining relief by his petition were beyond dispute, and thus the prosecutor's response could not have assisted the defendant in formulating any plausible argument or presenting any evidence to disprove the grounds for denial of his petition. Young v. State, 600 So.2d 1073 (Ala.Crim.App. 1992),

The issue of 'harmless error' was also considered in Ex parte Clemons, __So.2d__, 2007 WL 300722 (Ala. 2007). The State failed to plead the applicability of the procedural bars of Rule 32.2(a) to the petitioner's claims of ineffective assistance of trial counsel, and the trial court did not apply the procedural bars when it addressed those claims. The Court of Criminal Appeals, however, applied the mandatory procedural bars and thus did not address the merits of the petitioner's claims. The question for the Supreme Court was whether the sua sponte application of the procedural bars by the appellate court had "probably injuriously affected substantial rights" of the State or the petitioner. The Alabama Supreme Court held, that because it was obvious from the record that the procedural bars were applicable and nothing in the record established that the petitioner's or the State's substantial rights would be injuriously affected, the sua sponte application of the Rule 32.2(a) procedural bars by the Court of Criminal Appeals was harmless.

AMENDED PETITIONS

"[A] petitioner does not have the unfettered right to file endless amendments to a Rule 32 petition. The right to amend is limited by the trial court's discretion to refuse to allow an amendment if the trial court finds that the petitioner has unduly delayed filing the amendment or that an amendment unduly prejudices the State. Ex parte Jenkins, 972 So.2d 159 (Ala. 2005).Ex parte Rhone, 900 So.2d 455 (Ala. 2004),

Undue delay and undue prejudice cannot be applied to restrict the petitioner's right to file an amendment clearly provided for in Rule 32.7 simply because it states a new claim that was not included in the original petition. Ex parte Jenkins, 972 So.2d 159 (Ala. 2005).

NO RELATION BACK

Relation-back doctrine should not preclude an inmate from filing an amendment to a Rule 32 petition that asserts claims not raised in the original petition, Ex parte Jenkins, 972 So.2d

159 (Ala. 2005).

Restricting a Rule 32 petitioner's right to file an amendment by applying principles found in the Alabama Rules of Civil Procedure, such as the relation-back doctrine, should be the subject of careful consideration by the Standing Committee on the Alabama Rules of Criminal Procedure. We decline to rewrite the Rules of Criminal Procedure by sanctioning the incorporation of the relation-back doctrine into those rules when nothing of that nature presently appears in them.
Ex parte Woods, 957 So.2d 533 (Ala. 2006).

A petitioner seeking to amend a petition for post-conviction relief does not have an initial burden of showing diligence in filing the amendment or that the facts underlying the amendment were unknown to him before filing of original petition,) Ex parte Rhone, 900 So.2d 455 (Ala. 2004) overruling Cochran v. State, 548 So.2d 1062 (Ala.Crim.App. 1989

MULTIPLE CONVICTION

Where the allegations in a Rule 32 petition make reference to multiple judgments entered in one proceeding (and which is likewise reflected in the court record), the circuit court should consider the claims as they relate to all of the convictions and make specific findings of fact as required by Rule 32.9(d) Ala.R.Crim.P. Davis v. State, __ So.2d __, 2007 WL 4463923 (Ala.Crim.App. 2007),

Trial court should have dismissed the defendant's petition for postconviction relief without prejudice rather than ruling on its merits, where the defendant challenged, in a single petition, convictions for assault and sodomy that were entered in separate proceedings. Carr v. State, 884 So.2d 932 (Ala.Crim.App.2004).

EVIDENTIARY HEARINGS

Rule 32 petitioner is not automatically entitled to an evidentiary hearing on any and all claims raised in his petition. A trial court may summarily dismiss a petition for postconviction relief when a simple reading of the petition shows that, assuming every allegation of the petition is correct, the petition is without merit or is precluded. Sullivan v. State, 944 So.2d 164 (Ala.Crim.App. 2006), citing Boyd v. State, 913 So.2d 1113 (Ala.Crim.App. 2003),

After facts are pleaded that, if true, entitle a postconviction petitioner to relief, the petitioner is then entitled to an opportunity to present evidence proving those alleged

facts. Hodges v. State, __So.2d.__, 2007 WL 866658 (Ala. Crim. App. 2007).

Where a petition appears meritorious on its face a circuit court judge must conduct an evidentiary hearing on a petition for postconviction relief. Rash v. State, __So.2d.__, 2006 WL 3123521 (Ala.Crim.App. 2006).

Inmate filing a postconviction petition seeking an out-of-time appeal from the denial of his two previous petitions was entitled to an evidentiary hearing on his claim that his failure to appeal the denial of previous petitions was through no fault of his own because he timely mailed notices of appeal, which were apparently lost in the mail and never received by the circuit clerk. The Court noted that the claim was sufficiently pleaded and his factual allegations were unrefuted by the State. Poole v. State, __So.2d__, 2007 WL 1519008 (Ala.Crim.App. 2007). SeeFox v. State, __So.2d.__, 2007 WL 2460048 (Ala.Crim.App. 2007).

RIGHT TO COUNSEL

Federal ruling:
No provision of the Constitution requires the appointment of counsel for inmates who seek postconviction relief in state courts. Murray v. Giarratano, 482 U.S. 1, 109 S.Ct. 2765, 106 L.Ed.2d 1 (1989)

Alabama ruling:
“There is no requirement that indigent petitioners be furnished counsel regarding post-conviction proceedings.” Ex parte Cox, 451 So.2d 235, 237 (Ala.1983), cited in Mayes v. State, 563 So.2d 38 (Ala.Cr.App. 1990) and Ingram v State, ___ S0.2d ___ , 2006 WL 2788984 (Ala.Crim.App. 2006).

The Alabama Rules of Criminal Procedure permit a trial court to appoint counsel to represent an indigent petitioner in a postconviction proceeding if it ‘appears that counsel is necessary to assert or protect the rights of the petitioner. In instances where counsel is provided, such an appointment occurs only after a petition has been filed.” Ex parte Jenkins, 972 So.2d 159 (Ala. 2005).

SUMMARY DISPOSITION OF PETITION

If the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the

petitioner to relief under this rule and that no purpose would be served by any further proceedings, the court may either dismiss the petition or grant leave to file an amended petition. Leave to amend shall be freely granted. Otherwise, the court shall direct that the proceedings continue and set a date for hearing. (Rule 32.7(d)).

SUMMARY DISPOSITION OF TIME-BARRED, NON-JURISDICTIONAL CLAIMS

Trial court could summarily deny the defendant's petition for post-conviction relief without a hearing where the petition that was filed after the limitations period had expired raised only non-jurisdictional claims, and the defendant did not assert equitable tolling in his petition. Davenport v. State, __So.2d __, 2007 WL 4463946 (Ala.Crim.App. 2007),

SUMMARY DISPOSITION - PERSONAL KNOWLEDGE

“[T]he fact that a circuit court judge ruling on a petition for post-conviction relief is not required to conduct an evidentiary hearing on a petitioner's claims of ineffective assistance of trial counsel if that judge personally observed the conduct of counsel, does not relieve that judge of the responsibility of entering a sufficiently specific order addressing each of the petitioner's claims of ineffective assistance of trial counsel.” In Lucious v. State, __So.2d__, 2007 WL 2459973 (Ala.Crim.App. 2007),

"[I]f the circuit judge has personal knowledge of the actual facts underlying the allegations in the petition, he may deny the petition without further proceedings so long as he states the reasons for the denial in a written order." Sheats v. State, 556 So.2d 1094, 1095 (Ala.Crim.App.1989) See also Dobyne v. State, 805 So.2d 733, 740-41 (Ala.Crim.App. 2000) and Payne v. State, 791 So.2d 383, 394 (Ala.Crim.App. 2000).

REQUIREMENT OF WRITTEN ORDER

Despite the heavy caseload under which the trial courts of this State toil, and that Rule 32 petitions add to that already heavy burden, Rule 32.9(d) requires the trial court to make specific findings of fact relating to each material issue of fact presented. Long v. State __So.2d__, 2008 WL 902883 (Ala.Crim.App. 2008), See also Ex parte Walker, 652 So.2d 198 (Ala.1994) and Smith v. State, 665 So.2d 954 (Ala.Crim.App. 1994).

“It is to do likewise if it finds that a particular allegation fails to state a claim or to present any material issue of fact or law that would entitle [the petitioner] to relief. In other words, the court's written findings are to address individually each claim not precluded by Rule 32.2.” Dedeaux v. State, 976 So.2d 1045 (Ala.Crim.App. 2005).

However, a written order is required even when no evidentiary hearing is conducted and the judge has relied upon personal observations to dismiss the petition. Lucious v. State, __So.2d.__, 2007 WL 2459973 (Ala.Crim.App. 2007).

In dismissing a Rule 32 petition, a court need not specify the reasons, but if the record on appeal is insufficient to show the basis of the denial, the cause will be remanded for such a determination. Henderson v. State, 570 So.2d 879 (Ala.Crim.App. 1990).

Trial court's failure to make specific, written findings of fact regarding the defendant's claims in denying his petition required remand for the trial court to make such findings. Rule 32.9(d) Ala.R.Crim.P. Hawthorne v. State. __So.2d__, 2007 WL 4463941 (Ala.Crim.App. 2007).

The court must make specific findings of fact relating to each material issue of fact presented in an evidentiary hearing on the defendant's petition for postconviction relief. Wiggins v. State, __So.2d.__2006 WL 1121210 (Ala.Crim.App. 20 06).

Trial court's failure to make specific findings of fact supporting its dismissal of the defendant's post-conviction petition warranted remand. The Rules of Criminal Procedure required the court, if it conducted an evidentiary hearing on a post-conviction petition, to make specific findings of fact relating to each material issue of fact presented. Getz v. State, __So.2d.__, 2006 WL 2788976 (Ala.Crim.App. 2006)

If a court's findings on a petition for post-conviction relief are based on the court's personal knowledge of the underlying guilty plea proceedings, then the order should so state. Harris v. State 814 So.2d 1003 (Ala.Crim.App. 2001).