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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-14-0753

Sherman Collins

v.

State of Alabama

Appeal from Sumter Circuit Court
(CC-12-109)

On Return to Second Remand

PER CURIAM.

Sherman Collins was convicted of capital murder for killing Detrick Bell for pecuniary gain, see § 13A-5-40(a)(7), Ala. Code 1975, and of conspiracy to commit murder, see § 13A-

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4-3, Ala. Code 1975. The jury recommended, by a vote of 10 to 2, that Collins be sentenced to death for his capital-murder conviction. The trial court followed the jury's recommendation. The trial court also sentenced Collins to 10 years in prison for his conspiracy conviction. Collins appealed.

In our opinion on original submission, this Court affirmed Collins's convictions. Collins v. State, [Ms. CR-14-0753, Oct. 13, 2017] ___ So. 3d ___ (Ala. Crim. App. 2017). As to Collins's death sentence, however, this Court remanded Collins's case to the trial court for that court to correct its sentencing order and instructed that court to comply with § 13A-5-47(d), Ala. Code 1975,¹ by making specific findings of fact concerning the existence or nonexistence of each aggravating and mitigating circumstance and by summarizing the offense and Collins's involvement in it. Id. at ___.

On February 7, 2018, the trial court made return to this Court, providing this Court with a corrected sentencing order.

¹As we pointed out in our opinion on return to remand, § 13A-5-47, Ala. Code 1975, was amended effective April 11, 2017; the amendment, in part, deleted subsection (d) from that statute. That amendment does not apply retroactively to Collins. See § 13A-5-47.1, Ala. Code 1975.

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In that corrected sentencing order, the trial court summarized the offense and Collins's involvement in it, and found one aggravating circumstance to exist--that the murder was committed for "pecuniary or other valuable consideration or hire." (Corrected Record on Return to Remand, C. 4-6.) Although the trial court found no statutory mitigating circumstances to exist in Collins's case, it did find nonstatutory mitigating circumstances to exist. (Corrected Record on Return to Remand, C. 6-9.) Specifically, the trial court found Collins's "poor environment and lack of a father figure in the home" to be mitigating circumstances, but concluded that those facts "do little to mitigate." (Corrected Record on Return to Remand, C. 9.) After reweighing the aggravating and mitigating circumstances, the trial court again sentenced Collins to death. (Corrected Record on Return to Remand, C. 9-10.)

After return was made to this Court, and in accordance with Rule 28A, Ala. R. App. P., this Court gave the parties an opportunity to file supplemental briefs on return to remand. Both Collins and the State did so.

In his brief on return to remand, Collins argued that the trial court's corrected sentencing order was erroneous for two reasons. First, Collins claimed that the trial court "failed to give meaningful consideration to undisputed mitigating evidence." Collins v. State, [Ms. CR-14-0753, July 13, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2017) (opinion on return to remand). Second, Collins claimed that the trial court did not properly weigh the jury's 10 to 2 recommendation for the death penalty and "improperly stated in its order that the jury's recommendation was unanimous." ___ So. 3d at ___.

The State, on the other hand, argued that Collins's claims were meritless but recognized that the trial court's corrected sentencing order did include a factual error. Thus, the State suggested that "this Court ... order a second limited remand to allow the trial court to correct" that error. (State's brief on return to remand, pp. 1, 10.)

On July 13, 2018, this Court issued an opinion rejecting Collins's claim that the trial court failed to give meaningful consideration to undisputed mitigation evidence. ___ So. 3d at ___. "In light of the factual errors and their significance," however, we remanded Collins's case to the trial court for

that court to correct the "factual errors in its sentencing order." Collins, ___ So. 3d at ___ (opinion on return to remand). We further instructed the trial court to again "reweigh the aggravating circumstances and the mitigating circumstances after considering the correct recommendation made by the jury, i.e., 10 votes for death and 2 votes for life imprisonment without the possibility of parole." Id.

On October 3, 2018, the trial court made return to this Court, providing this Court with its corrected sentencing order. (Record on Return to Second Remand, C. 3-10.) In its corrected sentencing order, the trial court noted that the "jury heard evidence of aggravating and mitigating circumstances, and the jury returned a verdict recommending the defendant be sentenced to death on a vote of ten (10) for death and two (2) for life imprisonment without the possibility for parole." (Record on Return to Second Remand, C. 3.) The trial court concluded its corrected sentencing order as follows:

"After giving full measure and weight to the aggravating and mitigating circumstances, and taking into account the recommendation of the jury contained in its advisory verdict, it is the judgment of this court that the single aggravating circumstance outweighs the mitigating circumstances

shown by the evidence in this case. The aggravating circumstance speaks for itself and carries great weight in the court's mind. In addition, the jury voted ten (10) to two (2) for death. Further, it is reasonably clear that the murder of Detrick Bell by defendant, Sherman Collins, was deliberately and intentionally planned and carried out. When Sherman Collins was introduced to Detrick Bell and within seconds, shot him in the head and literally blowing his brains out, Collins unequivocally displayed a savage intention to kill another human being for Two Thousand Dollars (\$2,000). There is very little mistake about the evil intent of this defendant.

"When the court weighs the single aggravating circumstance against the mitigating circumstances in the manner required by law, there is no question and can be few questions in the minds of most human beings that the aggravating circumstance far outweighs the mitigating circumstances. Accordingly, it is ORDERED, ADJUDGED AND DECREED by the Court that the defendant, Sherman Collins, be punished by death."

(Capitalization in Original.) (Record on Return to Second Remand, C. 9-10.)

On return to second remand, this Court again gave both Collins and the State the opportunity to file supplemental briefs, see Rule 28A, Ala. R. App. P. On November 7, 2018, Collins informed this Court that he did "not intend to file a brief on return to second remand." The State, likewise, did not file a brief on return to second remand.

Having reviewed the trial court's corrected sentencing order on return to second remand, we conclude that the corrected sentencing order now complies with this Court's instructions and satisfies the statutory requirements of § 13A-5-47(d), Ala. Code 1975. Thus, we now turn to our remaining duties as an appellate court to examine the record for plain error under Rule 45A, Ala. R. App. P., and to review the propriety of Collins's death sentence under § 13A-5-53, Ala. Code 1975.

We start with our duty to review Collins's death sentence under § 13A-5-53, Ala. Code 1975.

As set out above, Collins was convicted of capital murder for killing Detrick Bell for pecuniary gain, see § 13A-5-40(a)(7), Ala. Code 197, and the jury recommended by a vote of 10 to 2 that the trial court sentence Collins to death. After receiving a presentence investigation report (1st Supp. C. 17-21) and conducting a judicial-sentencing hearing (R. 1104-14), the trial court followed the jury's recommendation and sentenced Collins to death. Although this Court twice remanded this case to the trial court to correct its sentencing order, the trial court ultimately complied with our

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instructions and the statutory requirements of § 13A-5-47(d), Ala. Code 1975, reweighed the aggravating circumstance and mitigating circumstances, and sentenced Collins to death.

After examining the record on appeal, this Court finds nothing to show that Collins's death sentence was imposed as a result of the influence of passion, prejudice, or any other arbitrary factor. See § 13A-5-53(b)(1), Ala. Code 1975.

Additionally, § 13A-5-53(b)(2), Ala. Code 1975, requires this Court to independently reweigh the aggravating and mitigating circumstances to determine whether Collins's sentence of death was the proper sentence.

"Section 13A-5-48, Ala. Code 1975, provides:

"'The process described in Sections 13A-5-46(e)(2), 13A-5-46(e)(3) and Section 13A-5-47(e) of weighing the aggravating and mitigating circumstances to determine the sentence shall not be defined to mean a mere tallying of aggravating and mitigating circumstances for the purpose of numerical comparison. Instead, it shall be defined to mean a process by which circumstances relevant to sentence are marshalled and considered in an organized fashion for the purpose of determining whether the proper sentence in view of all the relevant circumstances in an individual case is life imprisonment without parole or death.'

"'The determination of whether the aggravating circumstances outweigh the mitigating circumstances

is not a numerical one, but instead involves the gravity of the aggravation as compared to the mitigation.' Ex parte Clisby, 456 So. 2d 105, 108-09 (Ala. 1984). '[W]hile the existence of an aggravating or mitigating circumstance is a fact susceptible to proof, the relative weight of each is not; the process of weighing, unlike facts, is not susceptible to proof by either party.' Lawhorn v. State, 581 So. 2d 1159, 1171 (Ala. Crim. App. 1990).... 'The weight to be attached to the aggravating and the mitigating evidence is strictly within the discretion of the sentencing authority.' Smith v. State, 908 So. 2d 273, 298 (Ala. Crim. App. 2000)."

Stanley v. State, 143 So. 3d 230, 333 (Ala. Crim. App. 2011)

(opinion on remand from the Alabama Supreme Court).

Here, the trial court, in its corrected sentencing order, found the existence of only one aggravating circumstance (that the offense was committed for pecuniary gain), no statutory mitigating circumstances, and the following nonstatutory mitigating circumstances:

"The defendant, Sherman Collins, was born to a single parent on June 26, 1976. The evidence indicated there was never a father in the house; however, his brother, Elvin Collins, practically raised the defendant.

"The evidence revealed defendant Collins was a smart child, who was funny and wanted to learn. Defendant Collins did well in school because his brother, Elvin, encouraged him and rewarded him for doing well. The evidence further indicated Elvin taught defendant Collins how to write his name at age two, ride a bike and throw a football.

Defendant Collins played high school football and basketball. After graduation, Elvin Collins moved to California for approximately a year and a half. Elvin Collins indicated when he returned, he never got back in touch with Defendant, Sherman Collins. The testimony presented showed that defendant Collins, after graduation, started with 'bad friends and made bad decisions.'

"The defense counsel provided mitigation evidence that defendant Collins grew up in a really poor environment, called the Melpomene Housing Project. Yet, the defendant, was able to make it through high school as an honor student and a two sport athlete. The defendant received assistance from his friend and cousin, Fred Stemley, who testified, that defendant Collins should receive a life sentence without parole because 'everybody changes.'"

(Record on Return to Second Remand, C. 14-15.) As explained above, however, the trial court gave very little weight to the nonstatutory mitigating circumstances it found to exist. We agree with the trial court's findings and, after independently weighing the aggravating circumstances and the mitigating circumstances, this Court holds that Collins's sentence of death is appropriate.

Additionally, as required by § 13A-5-53(b)(3), Ala. Code 1975, this Court must determine whether Collins's sentence is excessive or disproportionate when compared to the penalty imposed in similar cases. Again, Collins was convicted of

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capital murder for killing Detrick Bell for pecuniary gain, see § 13A-5-40(a)(7), Ala. Code 1975. "This Court notes that a sentence of death has been imposed in similar cases. See Smith v. State, 908 So. 2d 273 (Ala. Crim. App. 2000) (murder for pecuniary gain); Sockwell v. State, 675 So. 2d 4 (Ala. Crim. App. 1993) (murder for pecuniary gain); Parker v. State, 587 So. 2d 1072 (Ala. Crim. App. 1991) (murder for pecuniary gain)." Vanpelt v. State, 74 So. 3d 32, 98 (Ala. Crim. App. 2009). It is further noted that Smith, Sockwell, Parker, and Vanpelt all, as in Collin's case, involved only one aggravating circumstance--that the offense was committed for pecuniary gain. Thus, Collins's death sentence is neither excessive nor disproportionate.

Finally, turning to our duty to examine the record under Rule 45A, Ala. R. App. P., we have searched the entire record for any error that may have adversely affected Collins's substantial rights and have found none.

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Accordingly, Collins's death sentence is affirmed.² Additionally, Collins's conspiracy-to-commit-murder sentence is affirmed.

AFFIRMED.

Windom, P.J., and McCool, J., concur. Kellum, Cole, and Minor, JJ., concur in the result.

²Collins's capital-murder conviction and his conspiracy-to-commit-murder conviction were affirmed in our opinion on original submission.