

SUPREME COURT OF ALABAMA

Childers v. State

899 So. 2d 1025 (Ala. 2004) · No. 1031029 · Decided November 5, 2004

SUMMARY

The Alabama Supreme Court reviewed the State's petition for certiorari concerning whether the Court of Criminal Appeals' decision in Childers conflicted with Ex parte Cole. The court held that the original first-degree robbery indictment did not allege that Childers was aided by another person, an essential element of second-degree robbery, and therefore did not confer jurisdiction to accept his guilty plea to that offense. The court quashed the writ of certiorari as improvidently granted.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Johnstone, Justice; Houston, Justice; Lyons, Justice; Harwood, Justice; Woodall, Justice; See, Justice; Brown, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	November 5, 2004
DOCKET	1031029
DISPOSITION	quashed
PROCEDURAL POSTURE	The State petitioned for certiorari review of the Alabama Court of Criminal Appeals' decision reversing the summary dismissal of Childers's Rule 32 post-conviction petition.
STANDARD OF REVIEW	Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Alabama v. Jimmy Allen Childers

TOPICS

- criminal procedure
- state post-conviction relief
- appellate procedure
- appellate jurisdiction
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the Alabama Court of Criminal Appeals' decision reversing dismissal of Childers's Rule 32 petition conflicted with *Ex parte Cole*.
2. Whether an indictment charging first-degree robbery, but lacking an allegation that the defendant was aided by another person actually present, conferred subject-matter jurisdiction to accept a guilty plea to second-degree robbery.
3. Whether a defendant's guilty plea and admission during the plea colloquy can informally amend an indictment to add a distinct offense that was not encompassed by the original indictment as a lesser-included offense.

HOLDINGS

1. The Court of Criminal Appeals' decision did not conflict with *Ex parte Cole*; the State's certiorari writ was therefore quashed as improvidently granted.
2. An indictment charging first-degree robbery without alleging that the defendant was aided by another person actually present does not charge second-degree robbery as a lesser-included offense and does not confer subject-matter jurisdiction to accept a guilty plea to second-degree robbery.
3. Whether an offense is lesser-included depends on the statutory and indictment allegations, not merely on evidence presented to the grand jury or admissions made during a guilty-plea colloquy.

KEY QUOTATIONS

“The Blockburger test turns on the statutory elements of the two offenses, not on the actual evidence that may be used by the state in proving the crimes.” (899 So. 2d at 1028)

“Thus, the factor crucial to the decision in Cole was the absence of a factual allegation in the indictment alleging that Cole committed the robbery with the aid of another person who was actually present rather than the absence of evidence in the record establishing that fact.” (899 So. 2d at 1034)

FACTUAL BACKGROUND

Childers was indicted in 1985 for first-degree robbery based on allegations that he used a pistol while taking money and food stamps. In 1986, he pleaded guilty to second-degree robbery under a plea agreement, after stating during the plea colloquy that he and two other people entered and robbed a convenience store. His indictment did not allege that he was aided by another person actually present, an essential element of second-degree robbery.

PROCEDURAL HISTORY

Childers pleaded guilty in 1986 to second-degree robbery pursuant to a plea agreement reducing a first-degree robbery charge, and he received a three-year prison sentence. In 2002, he filed a Rule 32 petition arguing that the indictment did not confer subject-matter jurisdiction to accept his plea because it did not allege that he was aided by another person actually present. The trial court summarily dismissed the petition, but the Court of Criminal Appeals reversed. The Supreme Court of Alabama granted the State's certiorari petition and quashed the writ as improvidently granted, concluding that the intermediate appellate decision did not conflict with *Ex parte Cole*.

DISPOSITION

quashed

CASES CITED

- Childers v. State, 899 So. 2d 1023, 1024 (Ala. Crim. App. 2003)
- Ex parte Cole, 842 So. 2d 605, 606-09 (Ala. 2002)
- Toliver v. State, 881 So. 2d 1070 (Ala. Crim. App. 2003)
- Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2004)
- Blockburger v. United States, 284 U.S. 299, 304 (1932)
- Ex parte Wright, 477 So. 2d 492, 493 (Ala. 1985)
- Anderson v. State, 686 So. 2d 381, 384 (Ala. 1996)
- Ex parte Dawson, 675 So. 2d 905, 907 (Ala. 1996)
- Ex parte Washington, 571 So. 2d 1062, 1064 (Ala. 1990)
- Ex parte Jordan, 486 So. 2d 485, 488 (Ala. 1986)
- Aucoin v. State, 548 So. 2d 1053 (Ala. Crim. App. 1989)
- Ex parte Long, 600 So. 2d 982 (Ala. 1992)
- Ex parte Edwards, 816 So. 2d 98, 108 (Ala. 2001)
- Ex parte Stephens, 512 So. 2d 786, 787-89 (Ala. 1987)
- Ex parte Oliver, 518 So. 2d 705, 705-07 (Ala. 1987)
- Crawford v. State, 886 So. 2d 846 (Ala. Crim. App. 2003)
- Culpepper v. State, 827 So. 2d 883, 884-87 (Ala. Crim. App. 2001)
- C.P. v. State, 597 So. 2d 246, 247 (Ala. Crim. App. 1992)
- Black v. State, 586 So. 2d 968 (Ala. Crim. App. 1991)
- Farmer v. State, 565 So. 2d 1238, 1239-40 (Ala. Crim. App. 1990)
- Miller v. State, 565 So. 2d 275, 276 (Ala. Crim. App. 1989)
- Johnston v. State, 518 So. 2d 244, 245-46 (Ala. Crim. App. 1987)
- Updyke v. State, 501 So. 2d 566, 567-68 (Ala. Crim. App. 1986)
- Schoenvogel ex rel. Schoenvogel v. Venator Group Retail, Inc., 895 So. 2d 225, 231 (Ala. 2004)
- Clark v. State, 294 Ala. 485, 488, 318 So. 2d 805, 807-08 (1974)
- Neder v. United States, 527 U.S. 1, 8-9 (1999)
- Blackledge v. Allison, 431 U.S. 63, 71 (1977)