REL: April 12, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1146

Gregory Blane Laakkonen

v.

State of Alabama

Appeal from Madison Circuit Court
(CC-18-602)

MINOR, Judge.

Gregory Blane Laakkonen pleaded guilty on June 26, 2018, to possession of a controlled substance, see § 13A-12-212, Ala. Code 1975, a Class D felony. The circuit court sentenced him to 24 months' confinement in the county jail. Laakkonen

appeals, challenging his sentence and the circuit court's denial of his motion to withdraw his guilty plea.

Before Laakkonen pleaded guilty, the circuit court addressed Laakkonen and his defense counsel.

> "You are charged, sir, with possession of a controlled substance, which is a Class D felony, which statutorily has a range of punishment of not less than--not more than five years nor less than a year and a day with the department of corrections and a fine not to exceed $7,500.
>
> "....
>
> "Okay. Now, this is subject to the sentencing guidelines, and as it relates to you, it has a presumptive sentence range of 15 to 97 months on a straight sentence or 8 to 27 months on a split sentence. Now there is a notation here that you have two prior felony convictions. Is there a stipulation or agreement in that regard?"

(R. 2-3.) Laakkonen affirmed that there was an agreement regarding his two prior felony convictions. The circuit court continued:

> "Okay. All right. And the reason why I ask that is that is taken into account in coming up with this presumptive sentence range. Now, as we indicated, the way that this is scored, non-prison versus prison, you scored in the prison range, but since it is a Class D felony underneath the presumptive sentence standards that--since you have two prior felony convictions, it is a community corrections, probation, depending upon what the Court decides, okay."

(R. 3-4.) After Laakkonen pleaded guilty, the circuit court set a sentencing hearing for August 23, 2018.

Before the sentencing hearing, a "Drug Prison In/Out Worksheet" and a "Drug Prison Sentence Length Worksheet" were completed for Laakkonen and provided to the circuit court. See Presumptive and Voluntary Sentencing Standards Manual (2016). Laakkonen received a score of 9 on his In/Out Worksheet, which placed him in the "prison" range for sentencing. On the Sentence Length Worksheet Laakkonen received scores for, among other things, having two prior adult felony Class C convictions. His total score on the Sentence Length Worksheet was 107, which gave him a presumptive sentence range of 15 to 97 months on a straight sentence and 8 to 27 months on a split sentence. (Supp. 30); see also Presumptive and Voluntary Sentencing Standards Manual 45.

At the sentencing hearing, the circuit court discussed the presentence investigative report, portions of the Presumptive and Voluntary Sentencing Standards Manual, and § 15-18-8, Ala. Code 1975. The circuit court noted that Laakkonen had a criminal history that went back to 1975 and

advised Laakkonen that "the worksheet involved in this matter indicates that this is a prison event and that the presumptive sentence range for you is 15 to 97 months on a straight sentence and 8 to 27 months on a split sentence." Laakkonen's counsel advised the circuit court that "§ 15-18-8 suggests that the court shall sentence to community corrections." The circuit court read aloud portions of the presumptive sentencing standards manual and portions of § 15-18-8, Ala. Code 1975, before orally pronouncing sentence upon Laakkonen. "So having previously found you guilty of Possession of a Controlled Substance, it's the sentence of this Court that you serve 24 months in the Madison County jail." (R. 13-16, 20-21.) The circuit court entered a written sentencing order to that effect.[1] The circuit court did not split Laakkonen's sentence. Laakkonen's subsequent motion to withdraw his guilty plea was denied.

[1]The circuit court also ordered Laakkonen to pay a $1,000 fine, $100 to the Crime Victims Compensation Fund, a $2,000 user-penalty fee, court costs, and attorney fees. Laakkonen was ordered to submit to DNA testing as required by § 36-18-25, Ala. Code 1975, and to pay a $2 fee for the DNA Database Fund as set forth in § 36-18-32, Ala. Code 1975. (C. 52-53.)

Laakkonen argues on appeal that his sentence was illegal because, he says, it was not in accordance with the presumptive sentencing standards. He contends that the circuit court improperly sentenced him to 24 months in the county jail and that the circuit court did not split Laakkonen's sentence in conformance with § 15-18-8(b), Ala. Code 1975. Laakkonen also argues that, because he was not advised of the correct sentence range he could receive for his conviction, the circuit court erred in denying Laakkonen's motion to withdraw his guilty plea. The State concedes that Laakkonen is entitled to relief on both arguments.

The October 1, 2016, amendment to the presumptive sentencing standards applies to Laakkonen's guilty plea to a Class D felony.

> "'In 2012, the legislature enacted § 12-25-34.2, Ala. Code 1975, effective May 15, 2012, to implement presumptive sentencing standards. See Act No. 2012-473, Ala. Acts 2012. See also Hyde v. State, 185 So. 3d 501, 502-04 (Ala. Crim. App. 2015)(detailing the history of the 2012 amendment to the Alabama Sentencing Reform Act of 2003, codified at §§ 12-25-30 to -38, Ala. Code 1975). The presumptive sentencing standards became effective on October 1, 2013, see Clark v. State, 166 So. 3d 147 (Ala. Crim. App. 2014), and were amended on October 1, 2016, to "incorporate the new Class D felonies," to add additional nonviolent crimes to the presumptive sentencing standards, and to "provide

> information on the new sentencing parameters for all Class C and Class D felony offenses." See Presumptive and Voluntary Sentencing Standards Manual 15.
>
> "'The Presumptive and Voluntary Sentencing Standards Manual, as amended, sets forth the offenses subject to the presumptive sentencing standards and provides circuit courts instructions and worksheets to use in imposing a sentence under the presumptive sentencing standards.'"

State v. Duncan, [Ms. 1170446, Aug. 31, 2018] ___ So. 3d ___ (Ala. 2018) (quoting Duncan v. State, [Ms. CR-16-0890, Dec. 15, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017)). Regarding Class D felonies, the manual provides, in relevant part:

> "If the most serious offense at a sentencing event is a Class D felony and the offender is not sentenced to probation, drug court, or a pretrial diversion program, the offender must be sentenced to a 'split sentence' pursuant to the requirements specified in Ala. Code § 15-18-8(b) and the presumptive sentencing ranges.
>
> "If the most serious offense at a sentencing event is a Class D felony and the offender's presumptive Prison In/Out worksheet recommendation is 'IN,' an Alabama Department of Corrections sentence becomes a sentencing option only if the offender has been previously convicted of any three or more felonies, or previously convicted of any two or more felonies that are Class A or Class B felonies.
>
> "If the most serious offense at a sentencing event is a Class D felony and the offender's presumptive Prison In/Out worksheet recommendation is 'OUT,' a

> County Jail sentence becomes a sentencing option only if the offender has been previously convicted of any three or more felonies, or previously convicted of any two or more felonies that are Class A or Class B felonies.
>
> "If the most serious offense at a sentencing event is a Class D felony and the offender's presumptive In/Out worksheet recommendation is 'IN,' high-intensity probation under the supervision of the Board of Pardons and Paroles in lieu of community corrections becomes an option only if no community corrections program exists within a county or jurisdiction and no alternative program options are available pursuant to § 15-18-172(e)[, Ala. Code 1975]."

Presumptive and Voluntary Sentencing Standards Manual 27. Examples of non-prison ("OUT") dispositions are probation, community corrections, county jail/work release, reverse split, and a split sentence with a suspended split. Examples of prison ("IN") dispositions are Department of Corrections (prison), community corrections,[2] split to Department of Corrections, split to community corrections, and high-intensity probation. Presumptive and Voluntary Sentencing Standards Manual 28.

In addition to conforming to the disposition

[2]Community corrections is listed in the Presumptive and Voluntary Sentencing Standards Manual as both a "non-prison" disposition and a "prison" disposition.

recommendation of the Prison In/Out Worksheet and the sentence-length range from the Sentence Length Worksheet, a sentence for a Class D felony must also comport with the requirements of § 15-18-8, Ala. Code 1975, under the circumstances of this case. Presumptive and Voluntary Sentencing Standards Manual 25, 27. Section 15-18-8(b) provides:

> "(b) Unless a defendant is sentenced to probation, drug court, or a pretrial diversion program, when a defendant is convicted of an offense that constitutes a Class C or D felony offense and receives a sentence of not more than 15 years, the judge presiding over the case shall order that the convicted defendant be confined in a prison, jail-type institution, treatment institution, or community corrections program for a Class C felony offense or in a consenting community corrections program for a Class D felony offense, except as provided in subsection (e), for a period not exceeding two years in cases where the imposed sentence is not more than 15 years, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for a period not exceeding three years and upon such terms as the court deems best. In all cases when it is shown that a defendant has been previously convicted of any three or more felonies or has been previously convicted of any two or more felonies that are Class A or Class B felonies, and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony. This subsection shall not be construed to impose the responsibility for offenders sentenced to a Department of Corrections facility

> upon a local confinement facility not operated by the Department of Corrections."

(Emphasis added.)

Laakkonen pleaded guilty to a Class D felony and had two prior felony convictions that were identified on the Sentence Length Worksheet as Class C felonies. Laakkonen's presumptive disposition under the Prison In/Out Worksheet was "IN," meaning a prison disposition. He was not sentenced to probation, drug court, or a pretrial-diversion program.

Under § 15-18-8(b), where a defendant is convicted of a Class D felony and is not sentenced to probation, drug court, or a pretrial-diversion program, and where the defendant receives a sentence of not more than 15 years, "the judge presiding over the case shall order that the convicted defendant be confined ... in a consenting community corrections program for a Class D felony offense, except as provided in subsection (e)."[3] Although § 15-18-8(b)

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[3]Section 15-18-8(e), Ala. Code 1975, provides:

> "(e) If no community corrections program exists within a county or jurisdiction and no alternative program options are available under subsection (e) of Section 15-18-172, a defendant convicted of an offense that constitutes a Class D felony may be sentenced to high-intensity probation under the

specifically provides that a defendant convicted of a Class C felony shall be confined "in a prison, jail-type institution, treatment institution, or community corrections program," the only "confinement" option available for a defendant convicted of a Class D felony under the same circumstances is a community-corrections program.

For a county jail sentence to be available for a defendant convicted of a Class D felony offense, the defendant must receive a non-prison ("OUT") disposition on the Prison In/Out Worksheet, and the defendant must have been previously convicted of three or more felonies or two or more Class A or Class B felonies.

> "If the most serious offense at a sentencing event is a Class D felony and the offender's presumptive Prison In/Out worksheet recommendation is 'OUT,' a County Jail sentence becomes a sentencing option only if the offender has been previously convicted of any three or more felonies, or previously convicted of any two or more felonies that are Class A or Class B felonies."

Presumptive and Voluntary Sentencing Standards Manual 27.

> supervision of the Board of Pardons and Paroles in lieu of community corrections."

See also Presumptive and Voluntary Sentencing Standards Manual 27.

Because Laakkonen's Prison In/Out worksheet recommendation was "IN" for prison and he had not been previously convicted of three or more felonies or two or more Class A or Class B felonies, a sentence of 24 months' confinement in the county jail was not available as a sentencing option for him.

Laakkonen also argues that, under the presumptive sentencing standards, the circuit court was required to split Laakkonen's sentence. The Presumptive and Voluntary Sentencing Standards Manual explains when a sentence on a Class D felony conviction must be split:

> "If the most serious offense at a sentencing event is a Class D felony and the offender is not sentenced to probation, drug court, or a pretrial diversion program, the offender must be sentenced to a 'split sentence' pursuant to the requirements specified in Ala. Code § 15-18-8(b) and the presumptive sentencing ranges."

Presumptive and Voluntary Sentencing Standards Manual 27. Here, Laakkonen was sentenced for a Class D felony and he was not sentenced to probation, drug court, or a pretrial-diversion program. Thus, under the presumptive sentencing standards, Laakkonen's sentence was required to be split in accordance with § 15-18-8(b).

Because the circuit court did not sentence Laakkonen to

a split sentence to be served in community corrections, the circuit court abused its discretion in departing from the presumptive sentencing standards. See Hyde v. State, 185 So. 3d 501, 511 (Ala. Crim. App. 2015) (this Court reviews a circuit court's departure from the presumptive sentencing standards for an abuse of discretion).

Laakkonen also contends that the circuit court did not correctly advise him of the sentence range that could be imposed for his conviction; therefore, he argues, his motion to withdraw his guilty plea should have been granted by the circuit court. Although this Court questions whether Laakkonen in fact wants to withdraw his guilty plea,[4]

[4]On September 11, 2018, this Court entered an order directing Laakkonen to certify to this Court the specific issues he had reserved for appeal before his guilty plea was entered, or to file a copy of "any timely filed motion to withdraw the guilty plea or motion for a new trial, which serves as the functional equivalent of a motion to withdraw the guilty plea." See Williams v. State, 854 So. 2d 625 (Ala. Crim. App. 2003). That same day, Laakkonen notified this Court that he would be appealing his illegal sentence even though the circuit court had not yet ruled on Laakkonen's motion to reconsider his sentence. See Mosley v. State, 986 So. 2d 476, 477 (Ala. Crim. App. 2007) ("[A]n allegedly illegal sentence may be challenged at any time, because if it has imposed an illegal sentence, the trial court has exceeded its jurisdiction and the sentence is void."). Laakkonen specifically advised this Court that "Laakkonen does not wish to withdraw his guilty plea, and asks only that his illegal

Laakkonen is entitled to do so.

Before Laakkonen pleaded guilty, the circuit court advised Laakkonen of the presumptive sentence range based on his score of 107 on the Sentence Length Worksheet.

> "Mr. Laakkonen ... [y]ou are charged, sir, with possession of a controlled substance, which is a Class D felony, which statutorily has a range of punishment of not less than--not more than five years nor less than a year and a day with the department of corrections and a fine not to exceed $7,500.
>
> "....
>
> "Okay. Now, this is subject to the sentencing guidelines, and as it relates to you, it has a presumptive sentence range of 15 to 97 months on a straight sentence or 8 to 27 months on a split sentence."

(R. 2-3.) Thus, the circuit court correctly referenced the

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sentence be reviewed and corrected to be in compliance with Alabama law." However, on September 24, 2018, Laakkonen filed a timely motion to withdraw his guilty plea, which the circuit court denied. (C. 89.) See Wallace v. State, 701 So. 2d 829, 830 (Ala. Crim. App. 1997) ("In criminal cases, the trial court has jurisdiction over a motion for a new trial if it is filed within 30 days after the entry of the judgment or sentence even if a notice of appeal is also filed, regardless of the order in which the motion and notice of appeal are filed.... Therefore, the appellant's motion to withdraw his guilty pleas was timely filed and, even though notice of appeal had been given prior to its filing, the trial court retained jurisdiction to consider the motion."). In his brief on appeal, Laakkonen challenges both his sentence and the denial of his motion to withdraw his guilty plea.

statutory maximum sentence of five years for a Class D felony under § 13A-5-6, Ala. Code 1975, but incorrectly advised Laakkonen that, under the presumptive sentencing standards "as it relates to you," he could receive a maximum sentence of 97 months, or more than 8 years.

The Alabama Sentencing Commission was created by the legislature to, among other things, develop the presumptive and voluntary sentencing standards.

> "In 2000, the legislature 'created within the judicial branch' the Alabama Sentencing Commission ('the Commission'), see § 12-25-1, Ala. Code 1975, to 'review existing sentence structure, including laws, policies, and practices, and to determine and recommend to the Legislature and Supreme Court changes regarding the criminal code, criminal procedures, and other aspects of sentencing policies and practices appropriate for the state.' § 12-25-2, Ala. Code 1975. The legislature mandated that the Commission's recommendations, in part:
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> > "'(1) Secure the public safety of the state by providing a swift and sure response to the commission of crime.
> >
> > "'(2) Establish an effective, fair, and efficient sentencing system for Alabama adult and juvenile criminal offenders which provides certainty in sentencing, maintains judicial discretion and sufficient flexibility to permit individualized sentencing as warranted by mitigating or aggravating factors, and avoids unwarranted sentencing disparities among defendants with like criminal records who have been

> found guilty of similar criminal conduct. Where there is disparity, it should be rational and not related, for example, to geography, race, or judicial assignment.
>
> "'(3) Promote truth in sentencing, in order that a party involved in a criminal case and the criminal justice process is aware of the nature and length of the sentence and its basis.
>
> "'(4) Prevent prison overcrowding and the premature release of prisoners.
>
> "'(5) Provide judges with flexibility in sentencing options and meaningful discretion in the imposition of sentences.
>
> "'(6) Enhance the availability and use of a wider array of sentencing options in appropriate cases.'
>
> "§ 12-25-2(a), Ala. Code 1975."

Mosley v. State, 187 So. 3d 1194, 1202 (Ala. Crim. App. 2015) (emphasis omitted). Although the Commission is charged with establishing the presumptive and voluntary sentencing ranges, there are limitations on how the sentencing ranges may be determined and established.

> "To achieve the goals recognized by the Legislature in Chapter 25 and Section 12-25-31, the commission shall:
>
> "....
>
> "(12) Conduct the research necessary to determine the appropriate point values for offenses

> classified as Class D felonies for purposes of the sentencing guidelines and establish such point values within the sentencing range set forth in Section 13A-5-6."

§ 12-25-33, Ala. Code 1975 (emphasis added). So, although the Commission has the authority to establish the sentence ranges for Class D felony offenses under the presumptive sentencing standards, the Commission must do so within the ranges set forth in § 13A-5-6. A sentence under the presumptive sentencing standards for a Class D felony, then, cannot exceed the sentence range of "not more than 5 years or less than 1 year and 1 day" found in § 13A-5-6, regardless of the presumptive sentence range calculated based on an offender's Sentence Length Worksheet.

Here, Laakkonen's score of 107 on the Sentence Length Worksheet gave him a presumptive sentence range of 15 to 97 months on a straight sentence. Presumptive and Voluntary Sentencing Standards Manual 45. The upper end of that range exceeds the maximum statutory term of imprisonment for a Class D felony by over three years. Therefore, in advising Laakkonen that he could receive 15 to 97 months on a straight sentence based on the presumptive sentencing standards, the circuit court did not correctly advise Laakkonen of the

maximum sentence he could receive for his conviction.[5]

Rule 14.4, Ala. R. Crim. P., provides that a circuit court "shall not accept a guilty plea" without first informing the defendant of, and determining that the defendant understands, "[t]he mandatory minimum penalty, if any, and the maximum possible penalty provided by law, including any enhanced sentencing provisions."

> "'The Alabama Supreme Court and this Court "have consistently held that a defendant must be informed of the maximum and minimum possible sentences as an absolute constitutional prerequisite to the acceptance of a guilty plea." Ex parte Rivers, 597 So. 2d 1308, 1309 (Ala. 1991) ....'
>
> "Aaron v. State, 673 So. 2d 849, 849-50 (Ala. Crim. App. 1995). As this Court noted in White v. State, 888 So. 2d 1288 (Ala. Crim. App. 2004):

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[5]The State notes in its brief that the Commission is aware of the "anomaly" that can occur in calculating a sentence for a Class D felony based on the sentencing-range table.

> "The State has been advised that the Alabama Sentencing Commission has made changes to the Presumptive and Voluntary Sentencing Standards Manual to correct the anomaly that may occur in calculating a sentence for a Class D felony. The correction includes a separate sentencing range table for Class D felonies. The proposed changes have been submitted to the legislature."

(State's brief, p. 18.)

> "'The law in Alabama is clear that the trial court's failure to correctly advise a defendant of the minimum and maximum sentences before accepting his guilty plea renders that guilty plea involuntary.'"

Riley v. State, 892 So. 2d 471, 474-75 (Ala. Crim. App. 2004). Here, as the State concedes, the circuit court did not correctly advise Laakkonen of the maximum sentence that could be imposed for his conviction for unlawful possession of a controlled substance, and Laakkonen's guilty plea was thus not "knowingly, voluntarily, and intelligently entered." See Gordon v. State, 692 So. 2d 871, 872 (Ala. Crim. App. 1996). Laakkonen is entitled to withdraw his guilty plea if he desires to do so.

Based on the foregoing, this cause is remanded to the circuit court for the circuit court to give Laakkonen the opportunity to withdraw his guilty plea. If Laakkonen wishes to withdraw his guilty plea, the circuit court is directed to set aside Laakkonen's conviction and sentence for possession of a controlled substance, see § 13A-12-212, Ala. Code 1975. If Laakkonen affirmatively indicates that he does not wish to withdraw his guilty plea, then the circuit court is directed to impose a sentence upon Laakkonen that comports with the

presumptive sentencing standards. Due return should be made to this Court within 42 days of the release of this opinion.

REMANDED WITH INSTRUCTIONS.

Windom, P.J., and Kellum, McCool, and Cole, JJ., concur.