

Rel: May 28, 2021

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-20-0067

Christopher Marshall Shugart

v.

State of Alabama

Appeal from Covington Circuit Court
(CC-17-261.70)

COLE, Judge.

In September 2017, Christopher Marshall Shugart was convicted of third-degree domestic violence (assault), a violation of § 13A-6-132(a)(1), Ala. Code 1975, which was punished as a Class C felony because the

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conviction was "[a] third or subsequent conviction." See § 13A-6-132(d), Ala. Code 1975. The circuit court sentenced him to 15 years' imprisonment; that sentence was split and he was ordered to serve 3 years' imprisonment, followed by 5 years' probation. (C. 6.) After he served the split-portion of his sentence, Shugart's term of probation began on April 26, 2020. (C. 6.)

Less than six months after he began serving his five-year term of probation, Shugart's probation officer filed an "Officer's Report on Delinquent Probationer," alleging that Shugart had violated his probation by committing a new offense -- namely, third-degree domestic violence (assault). (C. 6-7.) After a probation-revocation hearing, the circuit court issued a written order revoking Shugart's probation and ordering him to serve the balance of his 15-year sentence. (C. 38-39.)

On appeal, Shugart argues, among other things, that his sentence is illegal because the split portion of his sentence does not comply with § 15-18-8(b), Ala. Code 1975.¹ (Shugart's brief, pp. 13-17.) According to

¹Shugart also argues that his 2017 conviction for third-degree domestic violence (assault) is "unconstitutional; subjecting him to ex post

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Shugart, because the circuit court improperly split his sentence in 2017, this Court "must vacate the circuit court's order revoking [his] probation and remand this case for the circuit court to resentence [him] in accordance with § 15-18-8(b)." (Shugart's brief, p. 16.) Under the Alabama Supreme Court's recent holding in Ex parte McGowan, [Ms. 1190090, April 30, 2021] ___ So. 3d ___ (Ala. 2021), Shugart is correct.

At the time Shugart was sentenced, § 15-18-8(b), Ala. Code 1975, provided, in pertinent part:

"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 ... 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 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

facto law, as applied to the facts of this case" (Shugart's brief, p. 9), and that the "State failed to produce sufficient evidence to sustain the revocation of [his] probation" (Shugart's brief, p. 17). Because, as explained below, the circuit court's order revoking Shugart's probation "is void," see Ex parte McGowan, [Ms. 1190090, April 30, 2021] ___ So. 3d ___, ___ (Ala. 2021), and because a void order will not support an appeal, we do not address those arguments.

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."

(Emphasis added). Although § 13A-5-6(a)(3), Ala. Code 1975, did not require imposition of a split sentence because Shugart's sentence was imposed pursuant to the Alabama Habitual Felony Offender Act, any split sentence imposed had to comply with § 15-18-8(b).

As set out above, in 2017, Shugart was convicted of third-degree domestic violence (assault) -- which, based on his prior conduct, was punished as a Class C felony -- and he was sentenced to 15 years' imprisonment. That sentence was split and he was ordered to serve 3 years' imprisonment, followed by 5 years' probation. Thus, Shugart correctly argues that his sentence does not comply with § 15-18-8(b).

In Ex parte McGowan, the Alabama Supreme Court explained:

"[A] sentence unauthorized by statute exceeds the jurisdiction of the trial court and is void. See Ex parte Batey, 958 So. 2d [339] at 342 [(Ala. 2006)] (citing Rogers v. State, 728 So. 2d 690, 691 (Ala. Crim. App. 1998)). Except for taking measures to cure a jurisdictional defect in sentencing and to sentence the defendant in accordance with the law, a trial court has no jurisdiction to act on an unauthorized sentence, including conducting revocation proceedings and entering a revocation

order addressing the portion of the sentence that was unauthorized in the first place. It matters not that a revocation order purports to remove an unauthorized portion of a sentence; the trial court must first have subject-matter jurisdiction to conduct the proceedings under Rule 27.6, Ala. R. Crim. P., and to enter the order of revocation."

___ So. 3d at ___ (emphasis added). The Alabama Supreme Court held that, when a circuit court purports to revoke a defendant's probation when that defendant's sentence "was unauthorized in the first place," the circuit court's order purporting to revoke probation "is void" and must be vacated.

Id.

Because Shugart's split sentence was "unauthorized," the circuit court's order purporting to revoke his probation is void. Thus, pursuant to Ex parte McGowan, we order the circuit court to vacate its probation-revocation order. We note that, "at this juncture," the only thing the circuit court may do is

" "conduct another sentencing hearing and ... reconsider the execution of [Shugart's 15]-year sentence[]. Because the [15]-year sentence[] [was] valid, the circuit court may not change [it]." ' Enfinger v. State, 123 So. 3d [535] at 538 [(Ala. Crim. App. 2012)] (quoting Austin v. State, 864 So. 2d 1115, 1118 (Ala. Crim. App. 2003), and Moore v. State, 871 So. 2d 106, 109-10 (Ala. Crim. App. 2003))."

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Ex parte McGowan, ___ So. 3d at ____.²

APPEAL DISMISSED.

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

²The record on appeal does not indicate whether Shugart's sentence was the result of a negotiated plea agreement. If it was, Ex parte McGowan instructs that resentencing Shugart could affect the voluntariness of Shugart's guilty plea. ___ So. 3d at ____.