

REL: July 13, 2018

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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2017-2018

CR-17-0575

Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama v. Paul C. Friedley)

**(Jefferson Circuit Court,
CC-06-1946; CC-06-1947; and CC-06-1948)**

PER CURIAM.

The district attorney for the Tenth Judicial Circuit (hereinafter "the State") filed this petition for a writ of mandamus requesting this Court to direct Judge Stephen C. Wallace to vacate his March 8, 2018, order approving Paul C.

Friedley's transfer from the custody of the Alabama Department of Corrections to the Jefferson County Community Corrections Program and amending Friedley's sentence to reflect that the remainder of his sentence "is diverted to the Jefferson County Community Corrections Program." The State further requests that this Court direct Judge Wallace to reinstate Friedley's original sentence.

According to the information contained in the petition and Friedley's answer, on December 21, 2005, Friedley, while operating a motor vehicle under the influence of alcohol and driving in the wrong direction on Interstate 65, was involved in a head-on collision that caused the death of the driver of the other vehicle. Two other vehicles were also involved in the collision and the drivers of those vehicles were injured. He was charged with one count of murder and two counts of first-degree assault. On May 4, 2007, Friedley pleaded guilty to 1 count of manslaughter and to 2 counts of first-degree assault and was sentenced to 20 years in prison for each count.¹

¹It appears that Friedley also pleaded guilty to driving under the influence of alcohol and was sentenced to one year in prison. That sentence has subsequently concluded.

On July 17, 2017, Friedley filed a "Motion for Transfer to Community Corrections Halfway House." The State filed a written objection to the motion. A hearing was held on the motion on November 21, 2017, and on March 8, 2018, Judge Wallace entered his order granting Friedley's motion. The State filed this mandamus petition on March 15, 2018. Also on March 15, 2018, the State filed in the trial court a motion to reconsider and to vacate the order amending Friedley's sentence; it appears that motion is still pending.

Before this Court can consider the issues raised by the State in its petition, it must first consider an issue raised in Friedley's answer, specifically, that the State does not have standing to file this petition for a writ of mandamus. Friedley argues that a party must sustain an injury to a legally protected right in order to have standing to bring a petition for a writ of mandamus and that the State has not sustained such an injury. His argument is premised on the fact that Art. 9, Title 15, Code of Alabama 1975, does not require the attorney general or the district attorney to consent to the participation of an inmate in a community-corrections program. We disagree. "[A] trial court does not

have jurisdiction to impose a sentence not provided for by statute. Therefore, as an issue concerning subject-matter jurisdiction, "[a]n illegal sentence may be challenged at any time." "Hollis v. State, 845 So. 2d 5, 6 (Ala. Crim. App. 2002) (quoting Johnson v. State, 722 So. 2d 799, 800 (Ala. Crim. App. 1998), quoting in turn J.N.J., Jr. v. State, 690 So. 2d 519, 520 (Ala. Crim. App. 1996)). If Friedley is permitted to participate in a community-corrections program when he is not eligible to do so, then that would constitute an illegal sentence. "The State may file a mandamus petition challenging an illegal sentence." State v. Monette, 887 So. 2d 314, 315 (Ala. Crim. App. 2004). Therefore, because this petition challenges the legality of a sentence, the State has standing to bring this petition.

The State argues first in its petition that the trial court did not have jurisdiction to amend Friedley's sentence some 10 years after it was pronounced. Previously this Court has held that "[i]f a motion for a new trial or a request to modify a sentence is not filed within 30 days of sentencing, the trial court loses all jurisdiction to modify the sentence." Massey v. State, 587 So. 2d 448, 449 (Ala. Crim.

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App. 1991). See also Ex parte Hitt, 778 So. 2d 159 (Ala. 2000). However, the legislature may carve exceptions to this general rule by vesting jurisdiction in the sentencing court in limited circumstances. An example can be found in the now repealed § 13A-5-9.1, Ala. Code 1975. "By requiring in § 13A-5-9.1 that the provisions of § 13A-5-9 are to be applied retroactively, however, the Legislature vested jurisdiction in the sentencing judge or the presiding judge to reopen a case more than 30 days after a defendant has been sentenced." Kirby v. State, 899 So. 2d 968, 971 (Ala. 2004). Another example is found in § 15-18-172(d), Ala. Code 1975, which states, in pertinent part:

"A state inmate incarcerated in a state facility may be approved by the department for participation in a community punishment and corrections program established under this article and be assigned to a program in the county from which the inmate was sentenced if a community punishment and corrections program under this article has been established in that county and if the sentencing judge of the county authorizes the inmate to participate in the program."

Section 15-18-175(a)(1), Ala. Code 1975, provides that, in order to be considered for the community-corrections program, individuals must be "persons who, without this option, would be incarcerated in a correctional institution or who are

currently incarcerated in a correctional institution."

(Emphasis added.) Thus, if Friedley met the criteria for eligibility for participation in a community-corrections program, the sentencing judge would have the discretion to authorize his participation in such a program.²

The State next argues that Friedley is not eligible to participate in the community-corrections program. Individuals deemed to be "excluded felony offenders" are not eligible to participate in a community-corrections program. See § 15-18-

²Although not raised by the State as a ground for issuance of a writ of mandamus, this Court notes that it does not appear that Judge Wallace had jurisdiction to authorize Friedley's participation in a community-corrections program pursuant to § 15-18-172(d). According to the materials contained in the appendix to the State's petition, former Jefferson Circuit Judge Gloria Bahakel was the sentencing judge. Judge Wallace succeeded Judge Bahakel as circuit judge for the Tenth Judicial Circuit in 2011. Section 15-18-172(d) further provides: "In the event the sentencing judge is unavailable due to death, retirement, or any other reason, the presiding judge from the sentencing circuit shall act in the sentencing judge's stead." Because Judge Bahakel no longer serves as a circuit judge in the Tenth Judicial Circuit, the presiding judge of that circuit is the only judge who can authorize Friedley's participation in a community-corrections program. Cf. Bulger v. State, 904 So. 2d 219 (Ala. Crim. App. 2004) (holding that under the former § 13A-5-9.1, Ala. Code 1975, the denial of a motion seeking relief under § 13A-5-9.1 by a judge who was neither the sentencing judge nor the presiding circuit judge was void).

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175(b)(2), Ala. Code 1975. The Alabama Code defines "excluded felony offenders" as:

"One who is convicted of any of the following felony offenses: Murder, kidnapping in the first degree, rape in the first degree, sodomy in the first degree, arson in the first degree, trafficking in controlled substances, robbery in the first degree, burglary in the first degree, manslaughter, sexual abuse in the first degree, forcible sex crimes, sex offenses involving a child as defined in Section 15-20A-4, or assault in the first degree if the assault leaves the victim permanently disfigured or disabled."

Section 15-18-171(14), Ala. Code 1975. The State argues that Friedley is an excluded felony offender because he pleaded guilty to first-degree assault and the indictments to the offenses for which he pleaded guilty stated that he "did cause serious bodily injury to the person of another."³ At the

³In its petition, the State did not make an argument relating to the manslaughter charge but instead observed in a footnote that § 15-18-171(14) was amended in 2015, after Friedley was sentenced, to add manslaughter as an excluded offense. Friedley states in his answer that it appears that the State is conceding that this is an ex post facto law, and he argues that it is indeed an ex post facto law as applied to him. In its order, the trial court found this provision violates the Ex Post Facto Clause. We disagree. "Article I, § 10, United States Constitution, states in part: 'No state shall ... pass any ... ex post facto law.' An ex post facto law is a law passed after the commission of an act that increases the legal consequences of the act. Collins v. Youngblood, 497 U.S. 37, 110 S. Ct. 2715, 111 L. Ed.2d 30 (1990). However, a law passed and applied retroactively, but

November 21, 2017, hearing, the State introduced a letter from a surviving victim that stated that she had sustained two broken legs and damage to her spine as a result of the accident and that she continues to suffer disabilities related to that accident. Friedley argues that, although the trial court accepted the letter, the court did not rule it to be legal evidence or to be admissible. The transcript of the November 21, 2017, hearing attached to the State's petition indicates that the trial court stated: "I don't disagree that it's hearsay or that -- I don't know what position she's in to make a sort of ultimate issue determination on that. I will overrule your objection and allow them to introduce State's 1, but I will look at it, I believe, in it's proper context." (Exhibit B to State's Petition, p. 11.) (Emphasis added.)

which does not increase the punishment, does not violate the Ex Post Facto Clause. Williams v. State, 393 So. 2d 492, 494 (Ala. Cr. App. 1981)." State v. C.M., 746 So. 2d 410, 416 (Ala. Crim. App. 1999). In Bryant v. State, 494 So. 2d 874 (Ala. Crim. App. 1986), this Court held that amendments to work-release regulations making it more difficult for inmates to participate in a work-release program did not violate the Ex Post Facto Clause. Likewise, because the addition of manslaughter within the excluded felonies in § 15-18-171(14), Ala. Code 1975, subsequent to Friedley's sentence does not increase his punishment, it does not violate the Ex Post Facto Clause.

Thus, the transcript indicates that the trial court allowed the victim's letter into evidence. Accordingly, the State established that Friedley pleaded guilty to a first-degree assault that left the victim permanently disfigured or disabled.

"In order to satisfy the prerequisites for the issuance of a writ of mandamus, the petitioner must establish: (1) a clear legal right to the relief sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) no adequate remedy at law; and (4) the properly invoked jurisdiction of the reviewing court." Ex parte Wyre, 74 So. 3d 479, 480-81 (Ala. Crim. App. 2011). The State has met these four prerequisites for the issuance of a writ of mandamus. The State has a right to ensure that the laws of this State are upheld, namely, that the eligibility and exclusion requirements contained in § 15-18-175, Ala. Code 1975, are enforced. The trial court has a duty to enforce the aforementioned requirements, but, in allowing Friedley, an excluded felony offender, to participate in a community-corrections program, it has not done so. No statute or rule allows the State to appeal from Judge Wallace's order;

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therefore, it does not have an adequate remedy at law. Finally, the State has properly invoked this Court's jurisdiction by timely filing a petition for a writ of mandamus. Therefore, this petition is due to be, and is hereby, granted and the writ of mandamus is issued. Judge Wallace is directed to set aside his order of March 8, 2018, and to order Friedley returned to the custody of the Alabama Department of Corrections to serve the remainder of the sentence imposed upon him by the Jefferson Circuit Court on May 4, 2007.

PETITION GRANTED; WRIT ISSUED.

Windom, P.J., and Welch, Kellum, Burke, and Joiner, JJ., concur.