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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-0845

Lakeith Antwon Smith

v.

State of Alabama

Appeal from Elmore Circuit Court
(CC-16-430)

MINOR, Judge.

In an unpublished memorandum released today, this Court affirms Lakeith Antwon Smith's convictions for felony murder, see §§ 13A-6-2(a)(3) and 13A-7-5, Ala. Code 1975, first-degree burglary, see § 13A-7-5, Ala. Code 1975, first-degree theft of

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property, see § 13A-8-3, Ala. Code 1975, and second-degree theft of property, see § 13A-8-4, Ala. Code 1975. In this opinion, this Court remands this cause to the circuit court for resentencing.

At the sentencing hearing, the circuit court sentenced Smith to 30 years' imprisonment on the felony-murder conviction, 15 years' imprisonment on the burglary conviction, and to 10 years' imprisonment on each theft-of-property conviction; the sentences were ordered to run consecutively.

In his brief on appeal, Smith argues that his convictions for first-degree burglary and second-degree theft of property violated principles of double jeopardy because, he said, those convictions arose from the same set of facts. Contrary to Smith's argument, there was no double-jeopardy violation. "Convictions for both burglary and theft arising out of the same set of facts do not violate the Double Jeopardy Clause." Doster v. State, 72 So. 3d 50, 91 (Ala. Crim. App. 2010). However, Smith can be punished only once for each conviction. "A court may sentence a defendant for burglary and theft if the sentences are made concurrent, rather than consecutive." Brown v. State, 821 So. 2d 219, 225 (Ala. Crim. App. 2000);

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See also Canyon v. State, 218 So. 3d 871, 873 (Ala. Crim. App. 2016). Because the manner in which Smith is serving his sentences is incorrect, we remand this cause to the circuit court for that court to order that Smith's sentences for first-degree burglary and second-degree theft of property arising out of the same set of facts run concurrently with each other. Due return shall be made to this Court within 28 days of this decision.

AFFIRMED BY MEMORANDUM AS TO CONVICTIONS; REMANDED WITH INSTRUCTIONS AS TO SENTENCING.

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