REL: August 16, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1201

Isaac Isahas Washington

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-07-2951.61 and CC-07-2952.61)

PER CURIAM.

Isaac Isahas Washington pleaded guilty on February 11, 2008, to second-degree theft of property, see § 13A-8-4, Ala. Code 1975, and to leaving the scene of an accident, see § 32-10-2, Ala. Code 1975. Washington was sentenced as a habitual

felony offender to 20 years' imprisonment on each count, the sentences to be served concurrently; under a plea agreement, those sentences were split, and Washington was ordered to serve 1 year in prison followed by 5 years of probation on each count. Washington did not appeal his convictions or sentences.

In August 2011, Washington was charged with the 2008 kidnapping and murder of Tammy Stokes, a confidential informant for local law enforcement in drug cases. Washington and an accomplice took Stokes from a gasoline service station to a remote wooded location. Washington or the accomplice then shot and killed Stokes. Stokes's body was found based on details Washington provided to one of Washington's family members so that the family member could locate the body and claim a $5,000 reward.[1] Washington v. State, 214 So. 3d 1225

[1]In May 2014, Washington was found guilty of felony murder, see § 13A-6-2(a)(3), Ala. Code 1975, and second-degree kidnapping, see § 13A-6-44, Ala. Code 1975, for his involvement in the kidnapping and killing of Stokes. Washington was sentenced as a habitual felony offender to life imprisonment without the possibility of parole for the felony-murder conviction and to life imprisonment for the kidnapping conviction. On appeal, this Court vacated Washington's conviction and sentence for second-degree kidnapping on the basis that the conviction and sentence violated double-jeopardy principles. Washington v. State, 214 So. 3d 1225 (Ala. Crim. App. 2015).

(Ala. Crim. App. 2015).

In January 2012, Washington's probation in case no. CC-07-2951 and case no. CC-07-2952 was revoked. In January 2013, Washington filed a petition for postconviction relief under Rule 32, Ala. R. Crim. P., in case no. CC-07-2951 and case no. CC-07-2952. In that petition, Washington argued that the split-sentence portion of his sentences had been illegal and that the circuit court should have sentenced him to a minimum split sentence of three years in prison under § 15-18-8, Ala. Code 1975, on each count. Washington argued that because the circuit court had sentenced him in accordance with the plea agreement to a shorter split sentence than was authorized by law, he was entitled to withdraw his guilty plea. That petition was ultimately returned to Washington on February 6, 2018, for failure to pay the filing fee.

Washington filed the underlying Rule 32 petition on January 13, 2018. The petition, filed almost 10 years after the entry of his guilty plea in case no. CC-07-2951 and case no. CC-07-2952 and almost 9 years after he had completed the split portion of his sentences, reiterated the claim raised in his January 2013 petition, i.e., that the circuit court should

have sentenced him to a split sentence of at least three years' imprisonment rather the one-year split under his plea agreement and that he was thus entitled to withdraw his guilty plea in case no. CC-07-2951 and case no. CC-07-2952.

The State moved to dismiss Washington's petition on April 27, 2018. (C. 23-29.) The State argued that Washington's challenge to his split sentence was not a claim that the circuit court had no jurisdiction to sentence him or to split his sentences. Rather, the State argued, Washington's claim was that the particular manner in which the split sentence was imposed was unauthorized under § 15-18-8, Ala. Code 1975. Thus, the State argued, Washington's challenge to his split sentence was a claim arising under Rule 32.1(c), Ala. R. Crim. P., and was subject to the grounds of preclusion in Rule 32.2(a), Ala. R. Crim. P. The State argued further that Washington's claims were untimely, insufficiently pleaded, and without merit.

In a detailed written order, the circuit court dismissed Washington's petition. (C. 36.) The circuit court held that Washington's challenge to his split sentence was not a jurisdictional claim challenging an illegal sentence under

Rule 32.1(b), Ala. R. Crim. P., but rather was a nonjurisdictional challenge to an unauthorized sentence under Rule 32.1(c), Ala. R. Crim. P. The circuit court held that the petition was precluded, time-barred, and without merit. Washington appeals.

Citing Williams v. State, 203 So. 3d 888 (Ala. Crim. App. 2015), Washington argues that he is entitled to the "relief" of being sentenced to a longer imprisonment portion of the split sentences. In Williams, the petitioner, Cornelius Williams, was sentenced in 2003 to 20 years' imprisonment; that sentence was split and he was ordered to serve 2 years under a plea agreement. More than a decade later, Williams challenged the split portion of his sentence in a Rule 32 petition. This Court held that the split portion of the sentence had to be set aside because it did not meet the three-year minimum required under § 15-18-8(a), Ala. Code 1975. Further, because the two-year split had been part of Williams's original plea agreement, this Court held that Williams was entitled to withdraw his guilty plea. 203 So. 3d at 897.

In denying Washington's petition in this case, the

circuit court noted Washington's reliance on the Williams decision. The circuit court denied relief, however, based on this Court's subsequent decision in Hall v. State, 223 So. 3d 977 (Ala. Crim. App. 2016),[2] and also on certain principles set forth in Judge Joiner's special writing in Hall.[3]

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[2]In Hall, the petitioner, Kevin Brent Hall, filed a Rule 32 petition more than 24 years after his guilty-plea conviction for unlawful possession of a controlled substance, see § 13A-12-212, Ala. Code 1975. Hall alleged that his sentence was illegal because the circuit court had failed to impose a $1,000 mandatory fine under the Demand Reduction Assessment Act, § 13A-12-281, Ala. Code 1975. Hall asserted that he was entitled to the "relief" of having the $1,000 fine imposed. This Court disagreed.

This Court in Hall recognized that the fine required by the Drug Demand Assessment is "mandatory." 223 So. 3d at 980. This Court also recognized, however, that "mandatory" provisions could be waived under certain circumstances and that, therefore, the failure to comply with a mandatory provision does not necessarily implicate the jurisdiction of a court. Hall, 223 So. 3d at 980-82. Thus, this Court held that Hall's claim--which sought imposition of a "mandatory" fine--was "'nonjurisdictional' and subject to the grounds of preclusion set forth in Rule 32.2, Ala. R. Crim. P." 223 So. 3d at 982.

[3]Judge Joiner, writing specially in Hall, stated, in part:

> "As this Court's opinion explains, Hall's Rule 32 petition challenged his 1992 guilty-plea conviction for unlawful possession of a controlled substance, see § 13A-12-212, Ala. Code 1975, and his resulting sentence of 10 years' imprisonment. In his petition, which was filed nearly 24 years after his 10-year sentence was imposed, Hall alleged that his 10-year sentence was 'illegal' because, he said, the circuit

On appeal, Washington argues that his sentence is "illegal" because, he says, the circuit court failed to sentence him to a minimum split sentence of at least 3 years' imprisonment as required for a 20-year sentence under the Split Sentence Act, see § 15-18-18(a)(1), Ala. Code 1975. (Washington's brief, pp. 2-3.) Washington argues that he is entitled to the postconviction "relief" of now being resentenced to receive a longer split sentence than he originally received. (Washington's brief, pp. 2-3.) He argues further that, upon being resentenced, he is entitled to withdraw his guilty plea because, he says, a longer split

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> court failed to impose on him a $1,000 fine under the Demand Reduction Assessment Act. According to Hall, because the circuit court in 1992 failed to impose the demand-reduction assessment, he was entitled to the postconviction 'relief' of being resentenced by the circuit court so that court could impose on him the demand-reduction assessment.
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> "Under the text of Rule 32, resolution of Hall's claim is not complicated. ... [I]t simply is not 'relief' to obtain the 'remedy' of an additional fine. See Rule 32.1, Ala. R. Crim. P. ('Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief ....' (emphasis added))."

Hall, 223 So. 3d at 983 (Joiner, J., concurring specially).

portion of his sentence would render his guilty plea involuntary. Although we recognize that under § 15-18-8 the original split portion of Washington's sentence should have been three years rather than one year, we disagree that Washington is entitled to the "relief" of being resentenced.

When the circuit court sentenced Washington to 20-year base sentences and then split those sentences and ordered Washington to serve 1 year in prison, the base portion of the sentences was legal, but the manner in which the split portion of the sentences was executed was not. See § 15-18-8, Ala. Code 1975; McGowan v. State, [Ms. CR-18-0173, July 12, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019) ("'The circuit court's order illegally splitting Enfinger's sentence does not, however, render Enfinger's 20-year sentence illegal. Instead, the circuit court's order rendered illegal only the manner in which the lawful sentence was to be executed.'" (quoting with approval Enfinger v. State, 123 So. 3d 535, 540 (Ala. Crim. App. 2012) (Windom, P.J., dissenting)). Washington served the one-year split and then, while serving the probationary portion of his sentences, kidnapped and killed Stokes. Washington's probation was revoked in January 2012.

The revocation of Washington's probation rendered moot any illegality regarding the circuit court's imposition of the one-year split. McGowan, ___ So. 3d at ___ ("In circumstances such as those presented in this case and in Enfinger, the circuit court's authority to revoke the defendant's probation or a split sentence is not affected by the illegal manner of execution of the initial sentence. By revoking McGowan's split sentences and removing the illegal splits, the circuit court remedied the illegality of the manner in which McGowan's sentences were being executed, and McGowan is now properly serving legal 15-year sentences. Consequently, the circuit court's error in splitting his sentences is moot.").

Washington's reliance on Williams v. State, 203 So. 3d 888 (Ala. Crim. App. 2015), is unavailing. In Williams, unlike in this case, any error in the illegal portion of the split sentence does not appear to have been rendered moot.[4] Thus,

[4]The Williams Court did not address the possibility that any illegality in the split sentence was moot or that Williams's challenge to the illegality was untimely. The failure to address either of those questions was perhaps due to the principles stated in this Court's decision in Enfinger v. State, 123 So. 3d 535 (Ala. Crim. App. 2012), which held that a probation revocation could not render moot a claim that a split sentence was illegal. That holding in Enfinger was expressly overruled in McGowan v. State, [Ms. CR-18-0173, July

Williams is distinguishable.

Washington's claim that he is entitled to be resentenced to a longer split sentence is without merit, and the circuit court did not err in dismissing that claim.

Washington also is not entitled to relief on his claim that he is entitled to withdraw his guilty plea. As McGowan makes clear, any illegality in Washington's split sentences was rendered moot when his probation was revoked in January 2012. Thus, a claim that Washington's guilty plea was involuntary accrued, at the latest, in January 2012.[5] A postconviction claim that a guilty plea was involuntary is subject to the time-bar in Rule 32.2(c), Ala. R. Crim. P. See, e.g., Cantu v. State, 660 So. 2d 1026, 1029 (Ala. 1994) ("We hold that even though a defendant could file a motion under the provisions of Rule 14 to withdraw a plea of guilty and could appeal a trial court's ruling on that motion, the

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12, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019).

[5]In examining the timeliness of this claim, it is unnecessary to decide whether the time began to run for that claim as of the date of Washington's original guilty-plea conviction (February 2008) or the date of the probation revocation rendering moot any illegality in the split sentence (January 2012). Under either date, the claim would be untimely.

defendant would not be precluded from raising, in a timely filed post-conviction proceeding, the question of the voluntariness of the guilty plea."). Here, Washington's claim challenging the voluntariness of his guilty plea was clearly untimely, and the circuit court did not err in dismissing it.

The judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., concurs. Minor, J., concurs specially, with opinion, joined by Cole, J.; Kellum, J., concurs in the result; McCool, J., dissents, with opinion.

MINOR, Judge, concurring specially.

I concur in the Court's decision affirming the circuit court's judgment dismissing Isaac Isahas Washington's petition for postconviction relief under Rule 32, Ala. R. Crim. P. I write separately to note (1) that Rule 32 does not permit Washington's claim that he is entitled to the "relief" of a longer split sentence and (2) that Washington's claim that his guilty plea is involuntary is without merit.

The postconviction procedure in Rule 32, Ala. R. Crim. P., exists so that "any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief." Rule 32.1, Ala. R. Crim. P. (emphasis added). Washington's postconviction petition, filed in 2018, seeks the specific "relief" of being sentenced to a harsher punishment than he originally received under the terms of his 2008 plea agreement. But "it simply is not 'relief' to obtain the 'remedy' of" a harsher sentence or additional punishment. Hall v. State, 223 So. 3d 977, 983 (Ala. Crim. App. 2016) (Joiner, J., concurring specially). "Relief" is "[t]he redress or benefit, esp. equitable in nature (such as an injunction or specific performance), that

a party asks of a court.--Also termed remedy."[6] Black's Law Dictionary 1482 (10th ed. 2014). "Remedy" is "[t]he means of enforcing a right or preventing or redressing a wrong."[7] Id. at 1485. "'A remedy is anything a court can do for a litigant who has been wronged or is about to be wronged.'" Id. at 1485 (quoting Douglas Laycock, Modern American Remedies 1 (4th ed. 2010)).

Decisions of this Court such as Williams v. State, 203 So. 3d 888 (Ala. Crim. App. 2015), that have permitted a petitioner to use a Rule 32 petition to seek a harsher punishment have not expressly considered the stated purpose of Rule 32 providing a "remedy" or "appropriate relief." To the extent that such decisions permit a petitioner to use Rule 32, Ala. R. Crim. P., to seek a harsher punishment, those decisions are inconsistent with the purpose of Rule 32 as stated in the plain meaning of its text. Cf. Hall, 223 So. 3d at 990-91 (Joiner, J., concurring specially) ("Rule 32 exists

[6]"Relief" is also defined, in relevant part, as "a removal or lightening of something oppressive, painful, or distressing." Merriam-Webster's Collegiate Dictionary 988 (10th ed. 1997).

[7]"Remedy" is also defined as "the legal means to recover a right or to prevent or obtain redress for a wrong." Merriam-Webster's Collegiate Dictionary 989 (10th ed. 1997).

as a possible key to 'unlock the prison doors,' see Barton v. City of Bessemer, 27 Ala. App. 413, 417-18, 173 So. 621, 625 (1936) (opinion on rehearing), rev'd on other grounds, 234 Ala. 20, 173 So. 626 (1937), not as a means to subject petitioners to additional or harsher punishment.").

As to Washington's claim that his guilty plea was involuntary, the claim is without merit. The facts alleged in Washington's petition do not indicate that Washington was wronged in any manner by the circuit court's sentencing him to a one-year split sentence in accordance with an alleged plea agreement. The error that existed in the split sentence was, to quote a Community Chest card from the board game Monopoly, an "error in [Washington's] favor." Quite simply, if such a plea agreement existed, Washington got what he bargained for: a 20-year sentence with a 1-year split. The fact that the bargain did not work out is no one's fault but Washington's. After he served the one-year split--less time than he was legally required to--Washington failed to remain on probation because he participated in the kidnapping and murder of a confidential informant. Under those circumstances, he is not entitled to withdraw his guilty plea.

Cole, J., concurs.

McCOOL, Judge, dissenting.

I respectfully dissent from the majority's decision to affirm the circuit court's judgment.

Isaac Isahas Washington was sentenced to 20 years' imprisonment on two convictions, and, under a plea agreement, those sentences were split and Washington was ordered to serve one year in prison followed by five years of probation. As Washington, the State, the circuit court, and the majority appear to acknowledge, that split sentence clearly does not comply with the applicable version of § 15-18-8(a)(1), Ala. Code 1975, which provided at the time Washington entered his guilty plea, in pertinent part: "In cases involving an imposed sentence of greater than 15 years, but not more than 20 years, the sentencing judge may order that the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding five years, but not less than three years." (Emphasis added.)[8] Therefore, the sentence is illegal.

This Court has repeatedly held that when a trial court splits a sentence in an improper manner under § 15-18-8, Ala.

[8]Section 15-18-8 was amended in 2015 and again in 2018.

Code 1975, the sentence is unauthorized and illegal. See Williams v. State, 203 So. 3d 888 (Ala. Crim. App. 2015) (holding that ordering the defendant to serve only 2 years in confinement when the defendant had received a 20-year sentence was an unauthorized sentence), and Austin v. State, 864 So. 2d 1115 (Ala. Crim. App. 2003) (holding that ordering the defendant to serve only 26 months in confinement when the defendant had received a 20-year sentence was an unauthorized sentence). See also Enfinger v. State, 123 So. 3d 535 (Ala. Crim. App. 2012), overruled by McGowan v. State, [Ms. CR-18-0173, July 12, 2019] ___ So. 3d ___ (Ala. Crim. App. 2019), (holding that when sentencing the defendant on his conviction for sexual abuse of a child under 12, the trial court lacked authority under 15-18-8 to impose a split sentence on him because the statute specifically exempted offenders who had been convicted of criminal sex offenses involving children).

Further,

> "'[m]atters concerning unauthorized sentences are jurisdictional,' Hunt v. State, 659 So. 2d 998, 999 (Ala. Crim. App. 1994). Thus, this Court may take notice of an illegal sentence at any time. See, e.g., Pender v. State, 740 So. 2d 482 (Ala. Crim. App. 1999)."

Enfinger, 123 So. 3d at 537. See Williams, 203 So. 3d at 893-

94 (holding that an illegal split sentence presents a jurisdictional issue that can be raised at any time and is not subject to the procedural bars of Rule 32.2, Ala. R. Crim. P.), and Austin, 864 So. 2d at 1120 (holding that the trial court "did not have jurisdiction to order that [the defendant] serve only 26 months in confinement" when the defendant had received a 20-year sentence).

Moreover, the Alabama Supreme Court has held that an illegal sentence is a jurisdictional defect that may be raised or addressed at any time. As Judge Kellum noted in her dissent in Hall v. State, 223 So. 3d 977 (Ala. Crim. App. 2016):

> "[T]he Alabama Supreme Court 'has held that "'a challenge to an illegal sentence is jurisdictional and can be raised at any time.'"' Ex parte Jarrett, 89 So. 3d 730, 732 (Ala. 2011) (quoting Ex parte Batey, 958 So. 2d 339, 341 (Ala. 2006), quoting in turn Ginn v. State, 894 So. 2d 793, 796 (Ala. Crim. App. 2004)). That Court has specifically stated that '"a trial court does not have [subject-matter] jurisdiction to impose a sentence not provided for by statute."' Ex parte Butler, 972 So. 2d 821, 825 (Ala. 2007) (quoting Hollis v. State, 845 So. 2d 5, 6 (Ala. Crim. App. 2002)). See also Ex parte Trawick, 972 So. 2d 782, 783 (Ala. 2007) ('Trawick's claim that his sentence is illegal under the [Habitual Felony Offender Act] presents a jurisdictional claim.')."

Hall, 223 So. 3d at 995 (Kellum, J., dissenting). These

holdings firmly establish that illegal sentences present a jurisdictional issue.

Only recently in McGowan v. State, [Ms. CR-18-0173, July 12, 2019] ___ So. 3d ___ (Ala. Crim. App. 2019), did a majority of this Court overrule a significant body of precedent and decide that an illegal split sentence is not an issue that affects the trial court's authority to impose the sentence in the first place and that the illegality of the sentence can be rendered moot by a subsequent revocation of the split portion of the illegal sentence. I dissented in McGowan, and I continue to adhere to that dissent. See McGowan, ___ So. 3d at ___ (McCool, J., dissenting).

The majority here and in McGowan attempts to make a distinction between the "base portion" of the sentence and the "split portion" of the sentence. I do not believe that such a distinction can or should be made. When a defendant accepts a plea bargain and enters a guilty plea, he or she is not agreeing to a "base portion" and a "split portion." Instead, the defendant is simply agreeing to a "sentence," which of necessity includes both the underlying "base portion" and the imposed "split portion." This distinction between a "base

portion" and a "split portion" is an artificial creation of this Court; it does not reflect the realities of the plea-bargaining process. Simply stated, a sentence should not be divided into "base" and "split" portions in our analysis but should be viewed as a whole, and if any part of the sentence is illegal then the whole sentence is illegal. Applying this analysis to the present case, the one-year split portion of the sentence was illegal; thus, the entire sentence was illegal.

Although not explicitly stated in Williams, supra, it is apparent that this reasoning underlies the decision in that case. In the present case, rather than explicitly overruling Williams, or conceding that Williams was implicitly overruled by McGowan, the majority attempts to distinguish Williams.[9] However, Williams is on point and mandates that Washington's unauthorized sentence be set aside. The majority suggests that the result in Williams might have been different had the Court been asked to "address the possibility that any illegality in the split sentence was moot." However, Williams clearly stated that "[a] split sentence that imposes a period

[9]I note that the State does not ask this Court to overrule Williams on appeal.

of confinement that is not provided for in § 15-18-8, Ala. Code, 1975, is an illegal sentence" and that "[t]he trial court had no jurisdiction to impose a split sentence which was illegal." 203 So. 3d at 894 (emphasis added). If the trial court did not have the authority to impose the sentence in the first place, the trial court did not have the authority to later revoke the probationary portion of the unauthorized sentence. The trial court's subsequent revocation of the split portion of the illegal sentence does not render the issue moot. Indeed, in the circuit court, both the State and the circuit court conceded that Williams "would appear to make the resolution of [Washington's] claim straightforward." (C. 25, 37.) Instead, the State's argument and the circuit court's decision were based solely on this Court's ruling in Hall v. State, 223 So. 3d 977 (Ala. Crim. App. 2016).

Although the majority does not rely on Hall to reach its decision, I note that, contrary to the State's sole argument and the circuit court's decision, this Court's ruling in Hall is inapplicable in the present case. Hall simply recognized that a trial court's failure to impose a "mandatory" fine does not necessarily implicate the jurisdiction of the trial court.

That distinction between something that is "mandatory" and something that is "jurisdictional" is not at issue in the present case. As this Court has repeatedly held, a split sentence that is not authorized under § 15-18-8 presents a jurisdictional issue.

Additionally, I respectfully disagree with Judge Minor's conclusion in his special writing that Washington is not seeking "relief" in his Rule 32 petition. According to the Oxford English Dictionary, "relief" may be defined in the legal context as "remedy [or] redress." Oxford English Dictionary 565 (2d ed., J.A. Simpson & E.S.C. Weiner eds., 1989). "Remedy" is defined as "[l]egal redress." Id. at 584. The definition of "redress" is "[t]o set right, repair, rectify ... a wrong." Id. at 427. As the majority correctly notes, Washington is seeking to withdraw his guilty plea because an illegal sentence was imposed pursuant to his plea agreement. See Williams, 203 So. 3d at 895 ("[W]hen a split sentence was the product of a plea agreement accepted by the court that called for an illegal sentence ... and the illegal split sentence was imposed by the court in accordance with the plea agreement, the offender may withdraw his plea of

guilty."); Calloway v. State, 860 So. 2d 900, 906 (Ala. Crim. App. 2002 ("A trial court cannot accept a plea agreement that calls for an illegal sentence."); Taylor v. State, 677 So. 2d 1284, 1285 (Ala. Crim. App. 1996) ("[I]f a trial court refuses to abide by the terms of a plea agreement, it must grant the defendant's timely motion to withdraw the plea."). By doing so, Washington is seeking "relief" by trying to "set right" or "rectify" the "wrong" of his illegal sentence. Any focus upon the quality of the "relief" sought is misplaced; it matters not whether a sentence is "harsher" or "lighter" when it is, at its core, illegal. Rather than attempting to substitute our judgment for that of the parties by engaging in a "weighing process" as to the quality of a particular sentence, this Court should simply focus on whether the sentence imposed is a legal sentence that properly abides by the statutorily imposed boundaries of § 15-18-8(a)(1). The analysis should end when we determine that the sentence is illegal. In this case, I believe that Washington is seeking "relief" by seeking to have an illegal sentence -- and a guilty plea based on that illegal sentence -- set aside.

In conclusion, the trial court had jurisdiction to impose

a split sentence, but it did not have jurisdiction to impose the particular split sentence it imposed on Washington. Because the "split portion" of the sentence is illegal, the entire sentence is illegal, and, therefore, the trial court lacked jurisdiction. Because the trial court lacked jurisdiction to impose the sentence, Washington should be able to seek relief under Rule 32, and I believe that he is attempting to do so. As the circuit court and the State recognized, this result is "straightforward" under Williams, and I would not overrule Williams or the cases on which it relied, especially considering that we have not been presented with argument to do so. Also, I believe that Hall is inapplicable in the present case. Therefore, I would reverse the circuit court's summary dismissal of Washington's petition. Accordingly, I respectfully dissent.