REL: July 12, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-18-0173

Walter McGowan

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-16-3124; CC-16-3125; CC-16-3126; CC-16-3127)

PER CURIAM.

Walter McGowan appeals from an order revoking his split sentences. On December 18, 2017, McGowan pleaded guilty to first-degree burglary, a violation of § 13A-7-5, Ala. Code 1975, first-degree robbery, a violation of § 13A-8-41, Ala.

Code 1975, second-degree assault, a violation of § 13A-6-21, Ala. Code 1975, obstruction of justice, a violation of § 13A-8-194, Ala. Code 1975, and third-degree escape, a violation of § 13A-10-33, Ala. Code 1975.[1] For each conviction, the Jefferson Circuit Court sentenced McGowan, who is a habitual felony offender, pursuant to the voluntary-sentencing guidelines to 15 years in prison; those sentences, however, were split, and McGowan was sentenced to serve 5 years in prison, followed by 2 years on probation. The sentences were ordered to run concurrently. On February 23, 2018, a motion to revoke McGowan's split sentences was filed. Following a hearing, the circuit court revoked McGowan's split sentences, and McGowan now appeals.

On appeal, McGowan argues, as he did at the revocation hearing, that his sentences are illegal. He further contends that the circuit court's order revoking his allegedly illegal split sentences must be vacated. Specifically, McGowan argues that the circuit court did not have authority under § 15-18-8(a), Ala. Code 1975, a part of the Split-Sentence Act, to

[1]The guilty pleas were not entered pursuant to a negotiated plea agreement.

split his 15-year sentences to any period of confinement over 3 years.

At the time of McGowan's offenses in 2016,[2] § 15-18-8, Ala. Code 1975, the Split-Sentence Act, provided, in relevant part:

> "(a) When a defendant is convicted of an offense, other than a sex offense involving a child as defined in Section 15-20A-4(26), [Ala. Code 1975,] which constitutes a Class A or B felony and receives a sentence of 20 years or less in any court having jurisdiction to try offenses against the State of Alabama and the judge presiding over the case is satisfied that the ends of justice and the best interests of the public as well as the defendant will be served thereby, he or she may order:
>
> > "(1) That a defendant convicted of a Class A or Class B felony be confined in a prison, jail-type institution, or treatment institution for a period <u>not exceeding three years in cases where the imposed sentence is not more than 15 years</u>, 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 such period and upon such terms as the court deems best.

[2]McGowan committed the burglary offense in 2015. Although the timing of McGowan's burglary offense made his sentencing subject to a prior version of § 15-18-8, the portion of that former version of § 15-18-8(a)(1) relevant to his sentencing for the burglary offense is substantially similar to the version quoted herein.

> "....
>
> "(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 ... 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."

(Emphasis added.)

The circuit court imposed 5-year periods of confinement on sentences that did not exceed 15 years in prison. As McGowan correctly argues, his sentences for burglary and robbery, which were Class A or B felonies, are illegal because the sentences exceed the three-year maximum period of confinement under the applicable version of § 15-18-8(a)(1). This Court also notes that McGowan had three Class C felony convictions -- second-degree assault, obstruction of justice, and third-degree escape. Under the applicable version of § 15-18-8(b), the maximum period of confinement McGowan could

receive for those convictions, where the sentence imposed is not more than 15 years, is 2 years.

In support of his claim that the revocation order must be vacated, McGowan cites to this Court's decision in Enfinger v. State, 123 So. 3d 535 (Ala. Crim. App. 2012). In Enfinger, this Court addressed the effect of probation revocation following the imposition of an illegal sentence.

> "In Enfinger, Enfinger pleaded guilty to sexual abuse of a child under 12, see § 13A-12-69.1, Ala. Code 1975, and his sentence was split; Enfinger's probation was eventually revoked, and he appealed. On appeal, this Court first recognized that, because of the nature of Enfinger's offense -- 'a criminal sex offense involving a child' -- 'the circuit court did not have the authority to either impose a split sentence or to impose a term of probation.' Enfinger, 123 So. 3d at 537. Therefore, this Court concluded that the circuit court's purported probation-revocation order was unauthorized because the circuit court 'had no authority to conduct a probation-revocation hearing and revoke Enfinger's probation.' Enfinger, 123 So. 3d at 538."

Scott v. State, 148 So. 3d 458, 462-63 (Ala. Crim. App. 2013).

In Enfinger, Scott, and the cases that flowed therefrom, this Court has held that if the split portion of a defendant's sentence was unauthorized, then the circuit court was likewise unauthorized to revoke the defendant's probation or split sentence. See Hicks v. State, 138 So. 3d 338 (Ala. Crim. App.

2013); Pardue v. State, 160 So. 3d 363 (Ala. Crim. App. 2013); Brown v. State, 142 So. 3d 1269 (Ala. Crim. App. 2013); Adams v. State, 141 So. 3d 510 (Ala. Crim. App. 2013); Holley v. State, 212 So. 3d 967 (Ala. Crim. App. 2014); Mewborn v. State, 170 So. 3d 709 (Ala. Crim. App. 2014); McNair v. State, 164 So. 3d 1179 (Ala. Crim. App. 2014); and Belote v. State, 185 So. 3d 1154 (Ala. Crim. App. 2015). Nonetheless, the State contends that, even if the split portions of McGowan's initial sentences were unauthorized, this issue is moot because McGowan is no longer serving a split sentence.

The periods of confinement imposed on McGowan's sentences were not authorized by § 15-18-8. Enfinger, if followed, would dictate that this Court hold that the circuit court did not have the authority to revoke McGowan's split sentences and that this Court remand the case back to the circuit court so that McGowan could be resentenced. However, upon reexamining Enfinger, this Court now believes that the decision in Enfinger was an unnecessary departure from this Court's previous position that the removal of the illegal manner of execution of a sentence renders the illegality moot. See Kenney v. State, 949 So. 2d 192, 193 n.1 (Ala. Crim. App.

2006) (recognizing that the circuit court's imposition of an illegal probationary period was rendered moot when the defendant's probation was revoked); Williams v. State, 535 So. 2d 197, 198 (Ala. Crim. App. 1988) ("[A]ny question pertaining to appellant's sentence is now moot, since appellant's probation term has been terminated.").

In her dissent in Enfinger, Presiding Judge Windom disagreed with the majority's holding that, because it did not have the authority to split Enfinger's sentence or to impose a term of probation, the circuit court in that case had no authority to conduct a probation-revocation hearing or to revoke Enfinger's probation. Presiding Judge Windom stated:

> "[T]his Court has 'held that when the circuit court does not have the authority to split a sentence under the Split-Sentence Act, § 15-18-8, Ala. Code 1975, "the manner in which the [circuit] court split the sentence is illegal[,]" Austin v. State, 864 So. 2d 1115, 1118 (Ala. Crim. App. 2003), and ... "[m]atters concerning unauthorized sentences are jurisdictional." Hunt v. State, 659 So. 2d 998, 999 (Ala. Crim. App. 1994).' 123 So. 3d at 537. Further, it is well settled that a court can and should correct a jurisdictional error at any time. See Ex parte Peterson, 884 So. 2d 924, 926 (Ala. Crim. App. 2003) ('A court can notice a jurisdictional defect at any time and has a duty to correct the defect.'). Here, the circuit court corrected a jurisdictional defect -- it removed the illegality in the manner in which Enfinger executes his sentence -- and, because the defect was

> jurisdictional, the circuit court had the authority to do so. Id."

Enfinger, 123 So. 3d at 541-42 (Windom, P.J., dissenting).

Presiding Judge Windom further stated that, when the circuit court revoked Enfinger's probation and imposed Enfinger's original sentence, the illegal split had been removed, rendering moot any error in the circuit court's decision to split the sentence. Presiding Judge Windom explained:

> "Enfinger's sentence, as a habitual felon with two prior felonies, to 20 years in prison for the crime of sexual abuse of a child less than 12, see § 13A-6-69.1, Ala. Code 1975, a class B felony, was within the statutory range of punishment. See § 13A-5-9(b)(2), Ala. Code 1975 ('In all cases when it is shown that a criminal defendant has been previously convicted of any two felonies and after such convictions has committed another felony, he or she must be punished ... [o]n conviction of a Class B felony, [to] imprisonment for life or [to] any term of not more than 99 years but not less than 15 years.'). Accordingly, Enfinger's sentence of 20 years in prison was not illegal.
>
> "However, the manner in which Enfinger was to execute his sentence -- a split sentence with time served followed by 3 years of probation -- was illegal. Before trial, Enfinger pleaded guilty to sexual abuse of a child less than 12, a criminal sex offense against a child. Because Enfinger was convicted of a criminal sex offense against a child, the circuit court did not have the authority to impose a split sentence. See § 15-18-8(a), Ala. Code 1975 (authorizing a circuit court to split a

defendant's sentence '[w]hen [that] defendant is convicted of an offense, other than a criminal sex offense involving a child ...' (emphasis added)). Thus, the circuit court should not have split Enfinger's 20-year sentence.

"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. See Berry v. State, 698 So. 2d 225, 227 (Ala. Crim. App. 1996) (recognizing that an underlying sentence may be valid although 'the manner in which the trial court split the sentence' is illegal); Moore v. State, 871 So. 2d 106, 108 (Ala. Crim. App. 2003) (recognizing the difference between an illegal sentence, a sentence outside the statutory range of punishment, and the illegal execution of a sentence, an improper split of an otherwise legal sentence); Havis v. State, 710 So. 2d 527 (Ala. Crim. App. 1997) (same); Wood v. State, 602 So. 2d 1195 (Ala. Crim. App. 1992) (same).

"Thus, Enfinger was originally given a legal sentence that was ordered to be executed in an illegal manner. The illegal manner in which Enfinger was to serve his sentence does not, however, require this Court to remand this cause for resentencing because, on November 17, 2011, the circuit court revoked Enfinger's probation and ordered Enfinger to serve his original 20-year sentence, thus removing the split. Cf. Morris v. State, 876 So. 2d 1176, 1178 (Ala. Crim. App. 2003) (recognizing that the remedy for an illegal split of a legal sentence is to 'remand th[e] case to the circuit court with instructions [for] that court [to] set aside the split portion of the appellant's sentence' (emphasis added)); Simmons v. State, 879 So. 2d 1218, 1222 (Ala. Crim. App. 2003) (same); Johnson v. State, 778 So. 2d 252, 253 (Ala. Crim. App. 2000) ('"[A] probationer is not entitled to

> credit on his sentence for time served on probation."') (quoting Chapman v. State, 43 Ala. App. 693, 694, 199 So. 2d 865, 866 (1967)). In other words, by revoking Enfinger's probation and removing the illegal split, the circuit court remedied the illegality of the manner in which Enfinger was executing his sentence, and Enfinger is now properly executing a legal 20-year sentence. Because the probationary period of Enfinger's illegal split sentence has been removed and he is now properly executing a legal 20-year sentence, the circuit court's error in originally splitting his sentence and allowing him to execute a portion of his sentence on probation is moot."

Enfinger, 123 So. 3d at 540-41 (Windom, P.J., dissenting).

As indicated in the dissent in Enfinger, the position that revocation renders an illegal split or probationary period moot is the position of other jurisdictions. See Bailey v. State, 355 Md. 287, 301, 734 A.2d 684, 692 (1999) (holding that if the defendant's probation is revoked an illegal term of probation will be rendered moot); People v. Cortese, 79 A.D.3d 1281, 1284 n.1, 913 N.Y.S.2d 383, 386 n.1 (2010) (holding that when the defendant's probation was revoked the improper calculation of a probationary period was rendered moot); Moore v. State (No. M2003-00332-CCA-R3-PC, Feb. 17, 2004) n.1 (Tenn. Crim. App. 2004) (not selected for publication in the South Western Reporter) (holding that the defendant was not eligible to be sentenced to community

corrections under Tennessee law because he was convicted of a crime of violence in which a weapon was used, but that, "since the community corrections sentence has been revoked, ... this ... issue is moot"). See also State v. Bowman, 160 Or. App. 8, 14, 980 P.2d 164, 167 (1999) (holding that state's appeal of imposition of probationary sentences was moot where probation had been revoked, probation sentences were no longer in existence, and decision as to their validity could have no practical effect); Commonwealth v. McGriff, 432 Pa. Super. 467, 473, 638 A.2d 1032, 1035 (1994) (holding challenge to initial sentence of 20 years of probation as moot where defendant had been resentenced due to probation violations and did not allege that current sentence was illegal); State v. Crawford (No. 95, 712, Jan. 12, 2007), 149 P.3d 547 (Kan. Ct. App. 2007) (table -- unpublished disposition) ("Crawford argues that his 24-month probation period was incorrect according to K.S.A. 2005 Supp. 21-4611(c)(3). However, since his probation was revoked and Crawford is now serving his underlying sentence, that issue is moot."). Although these decisions from other jurisdictions are not binding on this Court, we find them persuasive and to have adopted the better

approach. "'The law does not require the doing of a futile thing.'" Minshew v. State, 975 So. 2d 395, 398 (Ala. Crim. App. 2007) (quoting Strickland v. State, 280 Ala. 34, 37, 189 So. 2d 774, 776 (1966)).

We agree with Presiding Judge Windom's dissent in Enfinger, and this Court now holds that Enfinger and its progeny are overruled. 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.

Despite overruling Enfinger and its progeny today, this Court acknowledges and strongly believes in the doctrine of stare decisis. Even so, "we must keep in mind that stare decisis is not an end in itself." Citizens United v. Federal Election Comm'n, 558 U.S. 310, 378 (2010).

> "[I]f the precedent under consideration itself depart[s] from the Court's jurisprudence, returning to the '"instrinsically sounder" doctrine established in prior cases' may 'better serv[e] the values of stare decisis than would following [the] more recently decided case inconsistent with the decisions that came before it.' Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 231 (1995); see also Helvering [v. Hallock, 309 U.S. 106] at 119 [(1940)]; Randall [v. Sorrell, 548 U.S. 230] at 274 [(2006)] (Stevens, J., dissenting). Abrogating the errant precedent, rather than reaffirming or extending it, might better preserve the law's coherence and curtail the precedent's disruptive effects."

Citizens United, 558 U.S. at 378-79.

This Court's decision in Enfinger altered the law in a manner that we are now impelled to overrule. We believe that "[r]emaining true to an 'intrinsically sounder' doctrine established in prior cases better serves the values of stare decisis than would following a more recently decided case inconsistent with the decisions that came before it." Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 231 (1995). "In such a situation, 'special justification' exists to depart from the recently decided case." Id.

Accordingly, the circuit court's revocation of McGowan's split sentences is affirmed.

AFFIRMED.

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

McCool, J., dissents, with opinion.

McCOOL, Judge, dissenting.

I respectfully dissent from the majority's decision to affirm the Jefferson Circuit Court's revocation of Walter McGowan's split sentences and to overrule Enfinger v. State, 123 So. 3d 535 (Ala. Crim. App. 2012), and its progeny. I believe that Enfinger is a well-reasoned decision. Further, the doctrine of stare decisis should prevent this Court from overruling Enfinger in the present case.

McGowan pleaded guilty to first-degree burglary, first-degree robbery, second-degree assault, obstruction of justice, and third-degree escape and was sentenced to concurrent terms of 15 years in prison for each conviction. The circuit court then split those sentences pursuant to § 15-18-8, Ala. Code 1975, and McGowan was ordered to serve 5 years in prison, followed by 2 years on probation. As the main opinion acknowledges, McGowan's sentences are illegal because the sentences exceed the maximum period of confinement under § 15-18-8.

The majority overrules Enfinger, which I believe correctly recognized that an illegal sentence is a jurisdictional issue that implicates the trial court's

authority to impose the sentence in the first place and to later revoke the defendant's probationary term of that unauthorized sentence. As Enfinger stated:

> "[W]hen the circuit court does not have the authority to split a sentence under the Split-Sentence Act, § 15-18-8, Ala. Code 1975, 'the manner in which the [circuit] court split the sentence is illegal[,]' Austin v. State, 864 So. 2d 1115, 1118 (Ala. Crim. App. 2003), and ... '[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)."

123 So. 3d at 537.

Further, after recognizing that the circuit court in that case did not have the authority under § 15-18-8 to split Enfinger's sentence or to impose a term of probation, this Court held that, under such circumstances, the proper remedy is to remand the case to the circuit court so that the defendant can be given a legal sentence:

> "In cases where the circuit court had no authority to impose the Split-Sentence Act, the proper remedy has been to remand the case to the circuit court for that court to remove the split portion of the sentence. See e.g., Simmons [v. State, 879 So. 2d 1218 (Ala. Crim. App. 2003)] (holding that[] the circuit court had no authority to split a sentence and remanding the case to the circuit court for that court to set aside the split

portion of the sentence), Morris v. State, 876 So. 2d 1176 (Ala. Crim. App. 2003) (same); cf., Moore v. State, 871 So. 2d 106 (Ala. Crim. App. 2003) (holding that, although the circuit court had authority to split the sentence, the circuit court split the sentence in an improper manner and remanding the case to the circuit court for that court to 'reconsider the execution' of the sentence); Austin [v. State, 864 So. 2d 1115 (Ala. Crim. App. 2003)] (same).

"Those cases, however, do not contemplate the specific facts of this case -- that is, where the circuit court imposes a split sentence and a term of probation under the Split-Sentence Act when it had no authority to do so and later conducts a probation-revocation hearing at which it revokes a defendant's probationary term and orders that the defendant serve the remainder of his underlying sentence in prison. Thus, the issue before this Court is whether the circuit court's improper imposition of the Split-Sentence Act can be remedied by the circuit court's conducting a probation-revocation hearing and revoking a defendant's probation.

"... Because the circuit court had no authority to split Enfinger's sentence or to impose a term of probation, it likewise had no authority to conduct a probation-revocation hearing and revoke Enfinger's probation under § 15-18-8(c), Ala. Code 1975, which provides, in part, that under the Split-Sentence Act the circuit court 'may revoke or modify any condition of probation or may change the period of probation.' Because the circuit court had no authority to impose a term of probation or to revoke probation, the circuit court's order revoking Enfinger's probation is void.

"Because the circuit court's probation order is void, the sentence in this case is analogous to the sentences at issue in Simmons and Morris. Thus, like

those cases, we must remand this case to the circuit court for that court to remove the split portion of Enfinger's sentence, see e.g., Simmons, supra; Morris, supra. To do so, the circuit court must 'conduct another sentencing hearing and ... reconsider the execution of [Enfinger's] 20-year sentence. Because the 20-year sentence was valid, the circuit court may not change it.' Austin, 864 So. 2d at 1119; Moore, 871 So. 2d at 109-10.

"We recognize that the circuit court's revocation of Enfinger's probation in this case appears to reach a result that is no different than the result that was obtained in Simmons and Morris -- i.e., the probation revocation in essence removed the unauthorized split. Those cases, however, did not involve merely the removal of an improper split. In each of those cases, the circuit court was instructed to consider on remand whether the removal of the split would affect the voluntariness of the defendant's guilty plea. Further, the circuit court in each case was instructed that, if the defendant moved to withdraw his guilty plea, it should allow the defendant to do so. See Simmons, supra; Morris, 876 So. 2d at 1178 ('Because the split sentence was a term of the appellant's plea agreement, if the appellant moves to withdraw his guilty plea, the circuit court should grant the motion. See Austin v. State, 864 So. 2d 1115 (Ala. Crim. App. 2003).'). To hold that the circuit court can remedy the imposition of an unauthorized split sentence by revoking a defendant's probation, however, would prevent that defendant from being able to move to withdraw his guilty plea and thus would treat him differently than the defendants in Simmons and Morris were treated -- i.e., after the circuit court conducts a resentencing, the defendant would not have the assistance of appointed counsel to move to withdraw his guilty plea under Rule 14.4(e), Ala. R. Crim. P.; instead, an indigent defendant would have to raise, pro se in a Rule 32 petition, the issue that the defendant's guilty plea was involuntary.

> "Furthermore, holding that a circuit court can remedy the imposition of an improper split sentence by revoking a defendant's probation could lead to an absurd result. For example, a defendant serving a sentence that is improper under the Split-Sentence Act could be charged with violating the terms and conditions of his probation and the circuit court could thereafter revoke that defendant's probation. On appeal, the defendant could contend that the evidence was insufficient to support the revocation of his probation, and if, after a review of the record, this Court determined that the defendant is, in fact, correct, we would be forced to hold that, although the evidence was insufficient to support the revocation, the imposition of the remainder of his sentence is correct because the circuit court could not have imposed a split sentence. Such a result is unsound and untenable.
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> "Because the circuit court did not have the authority to revoke Enfinger's probation, its order revoking Enfinger's probation is vacated, and this case is remanded to the circuit court for that court to resentence Enfinger in accordance with this opinion."

Enfinger, 123 So. 3d at 537-38.

I agree with the reasoning in Enfinger, and, as the main opinion recognizes, that reasoning has been followed by this Court in many cases since Enfinger was decided. See Hicks v. State, 138 So. 3d 338 (Ala. Crim. App. 2013); Pardue v. State, 160 So. 3d 363 (Ala. Crim. App. 2013); Brown v. State, 142 So. 3d 1269 (Ala. Crim. App. 2013); Adams v. State, 141 So. 3d 510 (Ala. Crim. App. 2013); Holley v. State, 212 So. 3d 967 (Ala.

Crim. App. 2014); Mewborn v. State, 170 So. 3d 709 (Ala. Crim. App. 2014); McNair v. State, 164 So. 3d 1179 (Ala. Crim. App. 2014); and Belote v. State, 185 So. 3d 1154 (Ala. Crim. App. 2015).

Moreover, the Alabama Supreme Court has clearly held that an illegal sentence is a jurisdictional defect that may be raised or addressed at any time. As Judge Kellum aptly summarized 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.')."

223 So. 3d at 995. Those holdings of the Alabama Supreme Court are unequivocal and firmly establish the principle that illegal sentences are jurisdictional.

I agree with the reasoning in Enfinger and the many cases that have followed that reasoning. Therefore, I would not overrule it. I believe that by overruling Enfinger today, we establish a bad policy precedent and set the stage for problems in the future.

In addition to being contrary to established precedent, I do not believe that the majority's decision is sound policy. It is a well-founded principle of American jurisprudence that the legislature is tasked with the authority to make the law. The legislature has clearly spoken through its passage of § 15-18-8(a)(1) and (b), Ala. Code 1975, which make illegal a split sentence like the ones imposed in the present case. The majority's decision effectively sanctions the implementation of sentences that conflict with the plain language of the statute.

Furthermore, the main opinion overrules a significant body of precedent without being asked to do so in the present case. McGowan specifically argues that, under Enfinger, the order revoking his split sentences must be vacated. McGowan's brief, at 12. However, in response, the State never even mentions Enfinger or any of its progeny in its brief. Under

the normal principles of stare decisis, this Court does not overrule obviously controlling precedent when we have not been invited to do so. See Ex parte McKinney, 87 So. 3d 502, 509 n.7 (Ala. 2011) (stating that "this Court has long recognized a disinclination to overrule existing caselaw in the absence of either a specific request to do so or an adequate argument asking that we do so"), and Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 926 (Ala. 2002) (stating that "[s]tare decisis commands, at a minimum, a degree of respect from this Court that makes it disinclined to overrule controlling precedent when it is not invited to do so"). Therefore, even if I were inclined to overrule Enfinger, I would not do so in the present case.

In conclusion, McGowan's split sentences were unauthorized. Under Enfinger, the circuit court did not have the authority to revoke McGowan's unauthorized split sentences. I agree with the reasoning in Enfinger, and I believe that overruling Enfinger is unsound policy. Further, the doctrine of stare decisis should prevent this Court from overruling Enfinger in the present case. Therefore, I would reverse the circuit court's order revoking McGowan's split

sentences and remand the case for that court to resentence McGowan. Accordingly, I respectfully dissent.