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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0838

Vandorn Octavius Matthews

v.

State of Alabama

Appeal from Escambia Circuit Court
(CC-14-368.71)

MINOR, Judge.

Vandorn Octavius Matthews appeals from the circuit court's revocation of his probation. Matthews was convicted of the unlawful possession of a controlled substance, and on February 25, 2015, he was sentenced to serve 65 months in the

CR-18-0838

custody of the Alabama Department of Corrections. The circuit court suspended the sentence and placed Matthews on probation for five years.

In October 2018, Matthews's probation officer filed a delinquency report alleging that Matthews had violated the conditions of his probation by committing the new offenses of third-degree domestic violence and violation of a protection-from-abuse order. After conducting a probation-revocation hearing on April 24, 2019, the circuit court found that Matthews had violated his probation. The circuit court revoked Matthews's probation and ordered as follows:

"[Matthews] is hereby resentenced to sixty-five (65) months in the custody of the Department of Corrections. The 65 month sentence is suspended, and, under the Split Sentence Act[, Matthews is ordered] to spend three (3) years in the Department of Corrections and the balance of five (5) years on State Probation."

(C. 17.) This appeal followed.

Matthews does not argue on appeal that there was insufficient evidence to establish that he had violated the terms and conditions of his probation. Rather, his only argument on appeal is that the circuit court abused its discretion when it "resentenced" him to serve a split sentence

CR-18-0838

of more than two years' imprisonment and a probationary period of more than three years. Matthews argues that the "new sentence" imposed upon him at the time of his probation revocation "violates the restrictions set out in § 15-18-8(b) [, Ala. Code 1975, the Split-Sentence Act], which states that a split sentence must be no longer than two (2) years for any Class C felony offense where the imposed sentence is not more than fifteen (15) years." (Matthews's brief, pp. 8,11.) Because upon revocation of Matthews's probation the circuit court split Matthews's sentence and ordered him to serve three years in the custody of the Department of Corrections and "the balance of five (5) years on State probation," Matthews argues that his sentence runs afoul of § 15-18-8(b), Ala. Code 1975, and is an illegal sentence.

Although Matthews did not object below to the circuit court's order revoking his probation, a claim alleging that a sentence is illegal may be raised for the first time on appeal. Pettibone v. State, 91 So. 3d 94, 120 (Ala. Crim. App. 2011).

Matthews was sentenced on February 25, 2015, for the unlawful possession of a controlled substance. At that time,

the offense of unlawful possession of a controlled substance was a Class C felony.¹ In arguing that it was illegal for the circuit court to order him, upon revocation of his probation, to serve a split sentence of more than two years, Matthews relies upon the language of § 15-18-8(b), Ala. Code 1975, which, with the 2015 amendment that became effective on January 30, 2016, now states:

"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 or in a consenting community corrections program for a Class D felony offense, except as provided in subsection (e), 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.) Matthews argues, based upon the above-quoted language, that, when the circuit court revoked his

¹Effective January 30, 2016, the offense of unlawful possession of a controlled substance is a Class D felony. § 13A-12-212(b), Ala. Code 1975.

CR-18-0838

probation and "resentenced" him in April 2019 to serve a split sentence of three years, the circuit court imposed an illegal sentence not authorized by § 15-18-8(b), Ala. Code 1975.

The problem with Matthews's argument is that the version of § 15-18-8, Ala. Code 1975, upon which he relies was not the version of that statute in effect at the time that he was sentenced in February 2015. That version--the one upon which Matthews relies--became effective January 30, 2016, nearly a year after Matthews was sentenced in February 2015. See Code Commissioner's Notes to § 15-18-8, citing Act No. 2015-185, Ala. Acts 2015 ("This act shall become effective on January 30, 2016"). Rather, at the time that Matthews was sentenced in February 2015 for the offense of unlawful possession of a controlled substance, § 15-18-8 provided that, when a defendant was convicted of an offense and received a sentence of not more than 15 years, the defendant could be "confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years" § 15-18-8(a)(2), Ala. Code 1975 (former version). So, then, at the time that Matthews was sentenced in February 2015, it was proper under the then existing version of § 15-18-8, Ala. Code

CR-18-0838

1975, for Matthews to be sentenced to 65 months' imprisonment and for that sentence to be split to serve three years in the custody of the Department of Corrections.

"Unless the statute contains a clear expression to the contrary, the law in effect at the time of the commission of the offense" controls the offense. Hardy v. State, 570 So. 2d 871, 872 (Ala. Crim. App. 1990). See also Moore v. State, 40 So. 3d 750, 753 (Ala. Crim. App. 2009) (quoting Davis v. State, 571 So. 2d 1287, 1289 (Ala. Crim. App. 1990)) ("[A] defendant's sentence is determined by the law in effect at the time of the commission of the offense."). In 2013, the Presumptive and Voluntary Sentencing Standards Manual (2013), made clear that "the recommendations for covered drug offenses[] become presumptive for applicable cases sentenced on or after October 1, 2013." Presumptive and Voluntary Sentencing Standards Manual at 14. (Emphasis added.) Thus, for covered drug offenses, the sentencing standards apply to all cases in which the defendant is sentenced on or after October 1, 2013, regardless of the date of the offense. Although § 15-18-8, Ala. Code 1975, was amended in 2015, nothing in either the 2015 amendment to the code section or

CR-18-0838

the Presumptive and Voluntary Sentencing Standards Manual (2016), which followed the 2015 amendment, alters this date of applicability for cases--such as Matthews's--in which the sentencing occurred on or after October 1, 2013, but before January 30, 2016, when the 2015 amendment became effective.

Rather, regarding "[t]he portions of this act relating to the substantive provisions of criminal offenses," the 2015 amendment applies only to offenses committed on or after January 30, 2016. Code Commissioner's Notes to § 15-18-8, Ala. Code 1975. Cf. McGowan v. State, [CR-18-0173, July 12, 2019] ___ So. 3d ___ (Ala. 2019) (although the defendant was sentenced for burglary in 2017 after the 2015 amendment to § 15-18-8 had become effective, because the burglary had been committed in 2015, "the timing of [defendant's] burglary offense made his sentencing subject to a prior version of § 15-18-8"). Thus, because Matthews's sentencing was subject to the former version of § 15-18-8, Ala. Code 1975, the circuit court did not err in ordering Matthews to serve a three-year split sentence.

And the fact that the circuit court did not originally impose a split sentence does not alter the outcome of this

CR-18-0838

case, because a circuit court may order a sentence to be split after it revokes a defendant's probation. Dixon v. State, 912 So. 2d 292, 295-96 (Ala. Crim. App. 2005) (noting that "a circuit court has the authority to split a defendant's sentence after it revokes the defendant's probation"); Parker v. State, 648 So. 2d 653 (Ala. Crim. App. 1994) (holding that the circuit court did not err in revoking the defendant's probation and ordering the defendant to serve a "split" sentence on his original conviction, even though the defendant's original sentence had been suspended and the defendant had originally been placed on probation with no split portion to serve).

Matthews also argues that the circuit court's April 2019 order "resentenc[ing]" him to a split sentence with the balance of five years to be served on probation is "a new sentencing event" that must meet the requirements of § 15-18-8(b). Because a five-year probationary period exceeds, he says, the length of probation that the circuit court could impose upon him under § 15-18-8(b), Matthews argues that his sentence is illegal. (Matthews's brief, p. 11.)

Again, Matthews relies upon the amended version of § 15-18-8(b), which provides that a defendant who is convicted of a Class C or D felony and receives a sentence of not more than 15 years shall be placed on probation "for a period not exceeding three years." § 15-18-8(b), Ala. Code 1975. But that version of § 15-18-8, Ala. Code 1975, did not become effective until after Matthews was sentenced in February 2015. At the time that Matthews was sentenced, a probationary term of five years was an acceptable duration under § 15-18-8.²

The Alabama Supreme Court has held that the revocation of probation is not a new sentencing event. Wray v. State, 472 So. 2d 1119, 1121 (Ala. 1985) ("Since a grant of probation does not reduce a sentence, it necessarily follows that the revocation of probation does not increase a sentence Therefore, the court's grant and reconsideration of probation was not a resentencing of [the appellant]."). Thus, the

²The former version of § 15-18-8, Ala. Code 1975, provided that "the sentencing court may, upon its own order, suspend the remainder of the sentence and place the convicted defendant on probation as provided herein or order the convicted defendant to be confined to a prison, jail-type institution, or treatment institution for a period not to exceed three years and that the execution of the remainder of the sentence be suspended and the defendant be placed on probation for such period and upon such terms as the court deems best."

CR-18-0838

circuit court's revocation of Matthews's probation in April 2019 was not a new sentencing event to which the amended version of § 15-18-8(b) applies. Although the Code Commissioner's Notes to § 15-18-8 provide that "[t]he portions of [Act 2015-185] relating to terms of supervision of persons by the Board of Pardons and Paroles shall apply to all persons under supervision of the Board of Pardons and Paroles on the effective date of this act or in the future," for the probation provisions of the amended § 15-18-8(b) to apply--that is, for a defendant to be subject to the three-year limitation on probationary periods in § 15-18-8(b)--the defendant must be sentenced under that version of the statute. See § 15-18-8(b), Ala. Code 1975 ("[W]hen 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 defendant be placed on probation for a period not exceeding three years" (Emphasis added.) Because Matthews was convicted and sentenced before the 2015 amendment of § 15-18-8(b), and because the revocation of a defendant's probation is not a new sentencing event, the authority for Matthews's term

CR-18-0838

of probation flowed not from the current version of § 15-18-8(b), but from the former version of § 15-18-8 that was in effect at the time of Matthews's conviction and sentence.

Based on the foregoing, the judgment of the circuit court is due to be affirmed.

AFFIRMED.

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