**REL: March 13, 2020**



# ALABAMA COURT OF CRIMINAL APPEALS

**OCTOBER TERM, 2019-2020**

---

**CR-18-0794**

---

**Ross Connor Morrow**

**v.**

**State of Alabama**

**Appeal from Mobile Circuit Court**
**(CC-18-5009; CC-18-5010; CC-18-5011; CC-18-5012; and CC-18-5013)**

MINOR, Judge.

Ross Connor Morrow pleaded guilty to one count of third-degree burglary, see § 13A-7-7, Ala. Code 1975, three counts of unlawfully breaking and entering a vehicle, see § 13A-8-11(b), Ala. Code 1975, and one count of first-degree promoting

prison contraband, see § 13A-10-36, Ala. Code 1975. For each conviction the Mobile Circuit Court sentenced Morrow to five years in the custody of the Alabama Department of Corrections, to run consecutively.[1] Morrow raises four issues on appeal: (1) whether the circuit court adequately advised him that it could order his sentences to run consecutively to each other; (2) whether the circuit court properly found an aggravating factor in departing from the presumptive and voluntary sentencing standards; (3) whether the circuit court allowed him to make a statement in his own behalf before sentencing him; and (4) whether Morrow's sentences are grossly disproportionate to his offenses and thus violate the prohibition on cruel and unusual punishment in the Eighth Amendment to the United States Constitution. For the reasons discussed below, we hold that there is no merit to issues (1) and (2) above but that, because the circuit court did not split Morrow's sentences under § 15-18-8(b), Ala. Code 1975, we must remand this case for the circuit court to resentence

[1]The circuit court also ordered Morrow to pay a $50 crime victims' compensation assessment and court costs in each case. In two of the cases, the circuit court ordered Morrow to pay restitution.

Morrow, rendering moot issues (3) and (4) above.[2]

Facts and Procedural History

A Mobile County grand jury indicted Morrow in September 2018 for two counts of third-degree burglary, three counts of unlawfully breaking and entering a vehicle, and one count of first-degree promoting prison contraband. Morrow, who was 18 years old at the time of the offenses, requested but was denied youthful-offender status. He entered a blind guilty plea in March 2019 to one count of third-degree burglary, three counts of unlawfully breaking and entering a vehicle, and one count of first-degree promoting prison contraband. Morrow admitted the aggravating sentencing factor of multiple victims. (C. 61.)

For each conviction Morrow signed an "Explanation of Rights and Plea of Guilty" form, commonly known as the Ireland form,[3] that included, among other things, a statement that, "[i]f you face multiple sentences for multiple crimes, the court may order your sentence for the above crime to run

[2]We address the issues on appeal in a different order than Morrow discusses them in his brief.

[3]See Ireland v. State, 47 Ala. App. 65, 250 So. 2d 602 (Ala. Crim. App. 1971).

consecutively to or concurrently with the other sentence or sentences." (C. 58; S.R. 19; S.R. 22.[4])

Before Morrow pleaded guilty the circuit court addressed Morrow and advised him of the charges against him and of the punishment range for each offense. The circuit court showed Morrow the Ireland forms and asked him whether he had signed the forms, whether he had reviewed the forms with his lawyer, and, as to the Ireland forms for the promoting-prison-contraband charge and the unlawfully-breaking-and-entering-a-vehicle charges, whether he understood the forms' contents. Morrow confirmed that he had signed the forms, had reviewed the forms with his lawyer, and that he understood the contents

[4]"S.R." designates the clerk's supplemental record on appeal.

of the forms.[5] (R. 5-10.[6])

Allen Carpenter, one of the victims of Morrow's burglary offenses, testified at the sentencing hearing. After Carpenter testified, the State told the circuit court that Morrow admitted the aggravating factor of there being multiple victims of his crimes. The circuit court did not comment on the aggravating factor but asked the State what sentence it recommended. The State recommended a sentence of 10 years in prison, split to serve 18 months, with 5 years of probation for each conviction, to run concurrently. The circuit court asked the State, "Did you run that past the victim?," and the

[5]Although the circuit court did not ask Morrow whether he understood the contents of the Ireland form for the third-degree-burglary charge, that form was, except for the case number and the crime charged, identical to the forms for which Morrow did affirm that he understood the contents. A circuit court need not refer to the Ireland form so long as the defendant affirms that he or she has been advised of his or her rights and that he or she understands those rights. Cf. Brown v. State, 695 So. 2d 153, 154 (Ala. Crim. App. 1996).

[6]The transcripts of the guilty-plea hearing and the sentencing hearing are separately paginated. Citations to the March 7, 2019, guilty-plea hearing are designated "(R.)" and are followed by the relevant page numbers of that transcript. Citations to the April 3, 2019, sentencing hearing are designated "(R2.)" and are followed by the relevant page numbers of that transcript.

State responded that the recommendation was "approximately twice what the guideline sentences would have given him." (R2. 13.) The circuit court stated, "When I hear the dog got beat [and] [t]he gun thing, that bothers me. The jewelry thing, that bothers me, but beating the damn dog, that really torques me off."[7] (R2. 14.) The circuit court then asked Carpenter what sentence Morrow should receive:

> "The Court: What do you think is appropriate?
>
> "The Witness: I think he should get whatever he deserves. You know, jail time.
>
> "The Court: I'm going to give him some jail time. I'm just curious what would you think?
>
> "The Witness: I'd give him the max if I could.
>
> "The Court: Would you run it concurrent or consecutive?
>
> "The Witness: Consecutive.
>
> "The Court: That would be 50 years. Some people commit murder and they don't get 50 years.
>
> "The Witness: Yeah.
>
> "The Court: I tell you what I'm going to do. I'm going to give him five years for each one, and I'm going to run them consecutive. That'll give him 25,

[7]Carpenter testified that the person who burglarized his home "had the audacity to beat my dog with a four by four." (R2. 10.)

> okay? And you know and I know that the State is broke. And these are not going to be considered violent. And Memaw's prison system is going to let him out at some point.
>
> "The Witness: As long as they notify me, that's fine.
>
> "The Court: And he's going to be somebody's girlfriend up there for a while. So I'm going to sentence you to five years in prison for each one of these counts, and I'm going to run them consecutive, okay? So that's 25 years."

(R2. 15-16.) Morrow objected to the sentences and told the circuit court, "That sentence you're giving is far outside of what the guidelines indicate." The circuit court responded, "Well, I don't have the guidelines." (R. 19.) Morrow's counsel advised the circuit court that Morrow did not have any prior felonies, and the circuit court pointed out that Morrow had a juvenile criminal record:

> "The Court: He has a record of youthful offender. He is a career criminal, okay? He has never learned.
>
> "Mr. Vallas [Morrow's counsel]: Well, he was 18 years old at the time of the offense.
>
> "The Court: Well, maybe we're breaking the chain of causation. Maybe he resorts to murder the next time he gets the drugs or whatever. Maybe something happens.
>
> "Mr. Vallas: I don't believe any of his prior offenses involve violence. Not a single one.

> "The Court. This is the sentence. Tell me that dog didn't experience some violence."

(R2. 19.) Morrow's counsel then told the court, "I think he wanted to say something." Morrow asked, "May I speak to the Court?" The circuit court responded, "May you speak with him?" Morrow then asked Carpenter some questions about Carpenter's dog, and, after Morrow denied that he had touched or beaten the dog during the burglary, Carpenter briefly addressed the circuit court. The circuit court then stated, "Okay. This is over. We're serving no purpose." (R2. 19-20.)

The circuit court entered a written order in each case sentencing Morrow to five years' imprisonment, to run consecutively. The circuit court denied Morrow's motion to withdraw his guilty plea and his motion to reconsider his sentences and for a new trial.

I.

Morrow contends that the circuit court should have allowed him to withdraw his guilty plea because, Morrow says, the circuit court did not advise him that it could order his sentences to run consecutively to each other. Morrow argues that his guilty plea was not entered knowingly, voluntarily,

and intelligently, and thus, he says, the circuit court should have granted his motion to withdraw his guilty plea.

"Whether to allow a defendant to withdraw his guilty plea rests within the sound discretion of the trial court, and this Court will not overrule that decision on appeal absent an abuse of discretion." Thacker v. State, 703 So. 2d 1023, 1026 (Ala. Crim. App. 1997). See also Speigner v. State, 663 So. 2d 1024, 1028 (Ala. Crim. App. 1994) ("The standard of review this court uses when evaluating the trial court's ruling on a motion to withdraw a plea of guilty is whether the trial court abused its discretion.").

Rule 14.4, Ala. R. Crim. P., states that a circuit court:

> "(a) ... shall not accept a plea of guilty without first addressing the defendant personally in the presence of counsel in open court for the purposes of:
>
> > "(1) Ascertaining that the defendant has a full understanding of what a plea of guilty means and its consequences, by informing the defendant of and determining that the defendant understands:
> >
> > "....
> >
> > "(iii) If applicable, the fact that the sentence may run

> consecutively to or concurrently with another sentence or sentences."

Subsection (d) of Rule 14.4 allows the circuit court to meet the requirements of Rule 14.4(a) by "determining from a personal colloquy with the defendant that the defendant has read, or has had read to the defendant, and understands each item contained in" the Ireland form. The Committee Comments to Rule 14.4 provide:

> "Section (d) is included to accommodate the current Alabama practice of informing the defendant of his rights through a form similar to that approved in Ireland v. State, 47 Ala. App. 65, 250 So. 2d 602 (1971), and subsequent cases. The rule, however, specifically retains the requirement that the trial judge personally address the defendant in order to determine that he understands the contents of the form and that the judge specifically question the defendant concerning the information contained in each item. Thus, in every case, the record should affirmatively show a colloquy between the trial judge and the defendant concerning all such matters. Twyman v. State, 293 Ala. 75, 300 So. 2d 124 (1974), held that where the record affirmatively shows that the defendant was informed of and understood his rights, the record need not include a full transcript of the colloquy. Subsequent cases in the Court of Appeals have held that while a full colloquy is not required where the form is used, the record

> must show that the trial judge made inquiry as to the defendant's understanding of the rights set out in the form. This rule requires such a colloquy and requires that specific inquiry be made with regard to the rights set out in Rule 14.4(a)(1) and (2). Such procedure will ensure that the form herein approved does not 'become so commonplace and perfunctory that [it fails] to serve the purpose for which [it is] intended.' See Twyman v. State, 293 Ala. 75, 83, 300 So. 2d 124, 131 (1974) (Heflin, C.J., dissenting)."

This Court has affirmed that a circuit court may comply with Rule 14.4(a) by using an Ireland form, "provided that the trial court specifically questions the defendant on the record as to each item in the form." Alford v. State, 651 So. 2d 1109, 1112 (Ala. Crim. App. 1994); see also Harris v. State, 916 So. 2d 627, 630 (Ala. Crim. App. 2005) (quoting Waddle v. State, 784 So. 2d 367, 370 (Ala. Crim. App. 2000)) ("'Rule 14.4(d), Ala. R. Crim. P., specifically allows an Ireland form to be used to supplement the guilty-plea colloquy under Rule 14.4(a), Ala. R. Crim. P., [but only] if the trial court determines "from a personal colloquy with the defendant that the defendant has read, or has had read to [him], and [he] understands each item" in the Ireland form.'").

For each offense to which Morrow pleaded guilty, Morrow,

his counsel, and the circuit court signed an Ireland form that informed Morrow that, if he faced "multiple sentences for multiple crimes, the court may order your sentence for the above crime to run consecutively to or concurrently with the other sentence or sentences." During the circuit court's colloquy, Morrow stated that he had reviewed the Ireland forms with his attorney and that he understood their contents. The presence of the executed Ireland forms--which contained the rights set out in Rule 14.4(a)(1)--and Morrow's affirmation that he had reviewed the forms with his attorney and that he understood their contents, along with the circuit court's colloquy with Morrow, sufficiently show that Morrow pleaded guilty knowingly, voluntarily, and intelligently. See Brown, 695 So. 2d at 154.

II.

Morrow contends--and the State agrees--that the circuit court departed from the presumptive and voluntary sentencing standards in sentencing Morrow for his third-degree-burglary and unlawfully-breaking-and-entering-a-vehicle convictions. Morrow argues that the aggravating factor to which he admitted--"multiple victims"--was not a "substantial

compelling reason" to justify the circuit court's departure from the sentencing standards. (Morrow's brief, pp. 45-46.) He alternatively argues that the circuit court did not sentence him based on the admitted aggravating factor of multiple victims but on "other factors" that, he says, the circuit court could not consider without the State's providing proper notice to Morrow. (Morrow's brief, p. 47.)

Morrow pleaded guilty to one count of third-degree burglary, three counts of unlawfully breaking and entering a vehicle, and one count of first-degree promoting prison contraband. Those offenses are all Class C felony offenses carrying a sentence range of "not more than 10 years or less than 1 year and 1 day" in prison. § 13A-5-6(a)(3), Ala. Code 1975. Third-degree burglary and unlawfully breaking and entering a vehicle are "worksheet offenses." Presumptive and Voluntary Sentencing Standards Manual (2016);[8] see generally, Hyde v. State, 185 So. 3d 501 (Ala. Crim. App. 2015)

[8]Although the Presumptive and Voluntary Sentencing Standards Manual was updated effective October 1, 2019, Morrow pleaded guilty in March 2019 and the circuit court sentenced him in April 2019. Thus, the 2016 version of the Presumptive and Voluntary Sentencing Standards Manual applies to Morrow's sentences.

(detailing the history of the presumptive and voluntary sentencing standards). Morrow concedes that first-degree promoting prison contraband is "not a guideline offense." (Morrow's brief, p. 27.)

"Worksheets must be completed and considered when the 'most serious offense' at a sentencing event is a worksheet offense in the same venue." Presumptive and Voluntary Sentencing Standards Manual at 23. Although the worksheet preparer may complete worksheets for each offense of conviction to assist the circuit court in determining which offense is the "most serious offense," the worksheet for the most serious offense is the one the circuit court must consider in sentencing a defendant. See, e.g., Presumptive and Voluntary Sentencing Standards Manual at 19, 31-32.

The Presumptive and Voluntary Sentencing Standards Manual provides five rules for determining which offense of conviction is the most serious offense that will control at the sentencing event. Rule 3 provides that, "[w]here a sentencing event includes both a worksheet offense and a non-worksheet offense and both carry the same statutory maximum penalty as governed by the felony offense classification, the

worksheet offense is the most serious offense." Presumptive and Voluntary Sentencing Standards Manual at 24. Because Morrow's non-worksheet offense (first-degree promoting prison contraband) carries the same statutory maximum penalty as Morrow's worksheet offenses (third-degree burglary and unlawfully breaking and entering a vehicle), one of the worksheet offenses is the most serious offense for sentencing purposes.

Rule 1 provides that, "[w]here two or more offenses at the same sentencing event are the same offense type covered by the same worksheet, the most serious offense is the offense with the highest number of points shown on the corresponding Sentence Length Worksheet." Presumptive and Voluntary Sentencing Standards Manual at 23. Here, worksheets were prepared for both the third-degree-burglary offense and the unlawfully-breaking-and-entering-a-vehicle offenses. Based on the Sentence Length Worksheet, third-degree burglary has a higher number of points (55 points) than unlawfully breaking and entering a vehicle (47 points).[9] Thus, at Morrow's

[9]Third-degree burglary under § 13A-7-7(a)(1) and (2) has a score of 55 points on the Sentence Length Worksheet. Third-degree burglary under § 13A-7-7(a)(3) has a score of 47 points

sentencing event, third-degree burglary was the most serious offense. Morrow's third-degree-burglary offense falls under the voluntary sentencing standards. Presumptive and Voluntary Sentencing Standards Manual at 49, 57. Thus, although unlawfully breaking and entering a vehicle falls under the presumptive sentencing standards, because at Morrow's sentencing event the most serious offense was third-degree burglary, the voluntary sentencing standards applied to Morrow's sentences and the worksheets for that offense were the ones the circuit court needed to consider.

A circuit court may impose a sentence that departs from the voluntary sentencing standards, and "[n]either the departure nor the reason stated for the departure shall be subject to appellate review ...." § 12-25-35, Ala. Code 1975; see also Presumptive and Voluntary Sentencing Standards Manual. Because the circuit court departed from the voluntary sentencing standards, rather than the presumptive sentencing standards, this Court cannot review the circuit court's decision to depart from the sentencing standards.

---

on the Sentence Length Worksheet. Morrow's third-degree-burglary offense received a score of 55 points.

We note, however, that Morrow's straight five-year sentences for his third-degree-burglary conviction and his unlawfully-breaking-and-entering-a-vehicle convictions do not comply with §§ 13A-5-6(a)(3) and 15-18-8(b), Ala. Code 1975, and are therefore unauthorized sentences. Although Morrow does not argue on appeal that his sentences are unauthorized, this Court may take notice of an unauthorized sentence on direct appeal, whether the issue is raised or not. Hunt v. State, 659 So. 2d 998, 999 (Ala. Crim. App. 1994); Pender v. State, 740 So. 2d 482 (Ala. Crim. App. 1999).

A circuit court's departure from the voluntary sentencing standards must be "in accordance with existing law." § 12-25-35, Ala. Code 1975. Third-degree burglary, see § 13A-7-7, Ala. Code 1975, and unlawfully breaking and entering a vehicle, see § 13A-8-11(b)(3), Ala. Code 1975, are Class C felony offenses. The sentencing range for a Class C felony is "not more than 10 years or less than 1 year and 1 day and must be in accordance with subsection (b) of Section 15-18-8 unless sentencing is pursuant to Section 13A-5-9."[10] § 13A-5-6(a)(3),

[10]The circuit court did not sentence Morrow as a habitual felony offender under § 13A-5-9, Ala. Code 1975.

Ala. Code 1975. Section 15-18-8(b), Ala. Code 1975, provides:

> "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."

The circuit court sentenced Morrow to five years in prison for each of his Class C felony convictions. Those sentences were within the statutory range. The circuit court did not, however, split Morrow's sentences. Because the circuit court should have but did not split Morrow's sentences under § 15-18-8(b), we must remand this case to the circuit court to impose sentences on Morrow that comply with §§ 13A-5-6(a)(3) and 15-18-8(b). See Jackson v. State, [Ms. CR-18-0454, Feb. 7, 2020] ___ So. 3d ___ (Ala. Crim. App. 2020).[11]

[11]In remanding this case for the circuit court to impose sentences that comply with §§ 13A-5-6(a)(3) and 15-18-8(b), we note that, because Morrow's five-year sentences for each of

III.

Morrow argues that the circuit court did not allow him to make a statement in his own behalf before sentencing him. Because, as discussed in Section II above, we must remand this case for a new sentencing hearing, this issue is rendered moot. See Caver v. State, [Ms. CR-18-0969, Jan. 10, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020).

We note, though, that Rule 26.9, Ala. R. Crim. P., provides that, in pronouncing a sentence upon a defendant, the circuit court "shall ... [a]fford the defendant an opportunity to make a statement in his or her own behalf before imposing sentence." Rule 26.9(b)(1), Ala. R. Crim. P. See also Duncan v. State, 587 So. 2d 1260, 1264 (Ala. Crim. App. 1991) (quoting Ex parte Anderson, 434 So. 2d 737, 737-38 (Ala. 1983)) ("It is without dispute that, prior to sentencing a defendant convicted of a felony, 'the sentencing court must ask the convicted person if he has anything to say as to why the sentence of law should not be imposed upon him.'"). Thus,

---

his Class C felony convictions was within the statutory range, the circuit court cannot change the underlying sentence. See Jackson, ___ So. 3d ___; Moore v. State, 871 So. 2d 106, 110 (Ala. Crim. App. 2003).

before it resentences him, the circuit court must allow Morrow the opportunity to make a statement in his own behalf.

IV.

Morrow argues on appeal that his sentences are "grossly disproportionate to the offenses committed" and that his sentences violate the prohibition on cruel and unusual punishment in the Eight Amendment.[12] Because we are remanding this case for the circuit court to resentence Morrow, this issue is moot.

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

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

[12]The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."