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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

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)**

On Remand from the Alabama Supreme Court

WINDOM, Presiding Judge.

Walter McGowan appealed from an order revoking his split sentences. On December 18, 2017, McGowan pleaded guilty to

CR-18-0173

first-degree burglary, see § 13A-7-5, Ala. Code 1975; first-degree robbery, see § 13A-8-41, Ala. Code 1975; second-degree assault, see § 13A-6-21, Ala. Code 1975; obstruction of justice, see § 13A-8-194, Ala. Code 1975; and third-degree escape, see § 13A-10-33, Ala. Code 1975. 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 for each conviction.

On original submission, this Court held that McGowan's sentences were illegal because the confinement portions of McGowan's split sentences did not comply with the applicable version of § 15-18-8(b), Ala. Code 1975. McGowan v. State, [Ms. CR-18-0173, July 12, 2019] ___ So. 3d ___, ___ (Ala. Crim. App. 2019). This Court further held that McGowan's challenge to his sentences was rendered moot because the illegality in McGowan's sentences was remedied by the circuit court's revocation of his probation. McGowan, ___ So. 3d at ___.

However, in Ex parte McGowan, [Ms. 1190090, April 30, 2021] ___ So. 3d ___ (Ala. 2020), the Alabama Supreme Court held that,

"[e]xcept for taking measures to cure a jurisdictional defect in sentencing and to sentence the defendant in accordance with the law, a trial court has no jurisdiction to act on an unauthorized sentence, including conducting revocation proceedings and entering a revocation order addressing the portion of the sentence that was unauthorized in the first place."

Ex parte McGowan, ___ So. 3d at ___. Consequently, the order revoking McGowan's probation is void and must be vacated. Id. at ___. Because a void order or judgment will not support an appeal, McGowan's appeal must be dismissed. See Gallagher Bassett Servs., Inc. v. Phillips, 991 So. 2d 697, 701 (Ala. 2008) (citing Greene v. Town of Cedar Bluff, 965 So. 2d 773, 779 (Ala. 2007)).¹

¹In dismissing this appeal, this Court notes that "the proper procedure at this juncture would be for the trial court to 'conduct another sentencing hearing and ... reconsider the execution of [McGowan's 15]-year sentence[s]. Because the [15]-year sentence[s] [were] valid, the circuit court may not change [them].'" Id. (quoting Enfinger v. State, 123 So. 3d 535, 538 (Ala. Crim. App. 2012), quoting in turn Austin v. State, 864 So. 2d 1115, 1118 (Ala. Crim. App. 2003), and Moore v. State, 871 So. 2d 106, 109-10 (Ala. Crim. App. 2003)).

Further, if McGowan's sentence was the product of a negotiated

CR-18-0173

APPEAL DISMISSED.

Kellum, McCool, Cole, and Minor, JJ., concur.

guilty plea, Ex parte McGowan instructs that resentencing McGowan could affect the voluntariness of his guilty plea. Ex parte McGowan, ___ So. 3d at ___.