REL: February 5, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0005

Kneely Brentison Pack

v.

State of Alabama

Appeal from DeKalb Circuit Court
(CC-14-148.72)

MINOR, Judge.

In this appeal, we consider whether the two-year limit on a term of probation for a misdemeanor conviction in § 15-22-54(a), Ala. Code 1975,

prevents a court from ordering a defendant sentenced at the same sentencing event for multiple misdemeanor convictions to serve consecutively the probationary terms on those convictions. We hold that the two-year limit in § 15-22-54(a) applies to each misdemeanor conviction and that a court may order a defendant to serve probationary terms consecutively if a separate misdemeanor conviction supports each term and each term does not exceed two years.

Facts and Procedural History

Kneely Brentison Pack pleaded guilty in 2015 to seven counts of home-repair fraud, see § 13A-9-111, Ala. Code 1975.[1] Under the plea

[1]The DeKalb County grand jury indicted Pack in 2014 on 11 counts, including 4 counts of first-degree theft of property, see § 13A-8-3, Ala. Code 1975, 3 counts of home-repair fraud, see § 13A-9-111, Ala. Code 1975, 1 count of criminal possession of a forged instrument, see § 13A-9-6, Ala. Code 1975, 2 counts of undertaking home building without a license, see § 34-14-A-14, Ala. Code 1975, and 1 count of installing an onsite sewage system without a license, see § 34-21A-25, Ala. Code 1975. (2d Supp. C. 4-6; 3d Supp. C. 3-5.) According to Pack's appellate brief, he was charged with similar crimes in Cherokee County, which is in the same judicial circuit as DeKalb County. The record does not include the indictments for the Cherokee County charges. The seven charges to which Pack pleaded guilty in a single proceeding in DeKalb County apparently included three counts originating from DeKalb County and four counts originating from Cherokee County. (2d Supp. C. 15-16; 3d Supp. C. 12-15.)

agreement, the DeKalb Circuit Court sentenced Pack on each count to 12 months in jail and 2 years' probation. Also under the plea agreement, the court suspended the sentences and ordered Pack to serve the 2-year probationary terms consecutively, resulting in 14 years of probation. The court ordered Pack to pay an agreed-upon amount of $163,372 in restitution. Pack did not appeal his convictions or sentences.

The circuit court revoked Pack's probation after a hearing in August 2019.[2] Based on the evidence, the circuit court found that Pack had violated the terms of his probation by committing the new offense of driving under the influence of drugs or alcohol. The circuit court rejected Pack's argument that ordering him to serve consecutive terms of probation violated § 15-22-54. The circuit court, in a detailed order, cited the lack of statutory support for Pack's position but noted the issue was "ripe for appellate review." As a sanction for violating his probation, the circuit court ordered Pack to serve one year in jail. Pack appeals.

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[2]The record shows the State also started revocation proceedings against Pack in 2016 and 2018 based on his alleged noncompliance with the terms of his probation.

Discussion

On appeal, Pack reiterates his challenge to the consecutive probationary terms. Pack argues that § 15-22-54(a) prohibits the consecutive terms of probation that he agreed to serve. According to Pack, he has already served more than two years of probation, and thus, he says, the circuit court no longer could revoke his probation.[3]

The version of § 15-22-54(a) applicable to Pack's case provided:

> "The period of probation or suspension of execution of sentence shall be determined by the court, and the period of probation or suspension may be continued, extended, or terminated. However, in no case shall the maximum probation period of a defendant guilty of a misdemeanor exceed two years, nor shall the maximum probation period of a defendant guilty of a felony exceed five years. When the conditions of probation or suspension of sentence are fulfilled, the court shall, by order duly entered on its minutes, discharge the defendant."[4]

(Emphasis added.) Relying on the emphasized language above, Pack argues the circuit court could not order him to serve his two-year

[3]Pack asserts he has served 1,010 days, or more than 2 1/2 years, of probation.

[4]Section 15-22-54 has been amended twice since 2014. See Act No. 2015-185, Ala. Acts 2015; Act No. 2019-513, Ala. Acts 2019. Those amendments did not affect the two-year limit in § 15-22-54(a) applicable to the misdemeanors Pack pleaded guilty to.

probationary terms consecutively.

These principles guide our examination of what a statute means:

> "In determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature. As we have said:
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> > " ' "Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." '
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> "Blue Cross & Blue Shield v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)); see also Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n, 589 So. 2d 687, 689 (Ala. 1991); Coastal States Gas Transmission Co. v. Alabama Pub. Serv. Comm'n, 524 So. 2d 357, 360 (Ala. 1988); Alabama Farm Bureau Mut. Cas. Ins. Co. v. City of Hartselle, 460 So. 2d 1219, 1223 (Ala. 1984); Dumas Bros. Mfg. Co. v. Southern Guar. Ins. Co., 431 So. 2d 534, 536 (Ala. 1983); Town of Loxley v. Rosinton Water, Sewer, & Fire Protection Auth., Inc., 376 So. 2d 705, 708 (Ala. 1979). It is true that when looking at a statute we might sometimes think that the ramifications of the words are inefficient or unusual. However, it is our job to say what the law is, not to say what it should be. Therefore, only if there is no rational way to interpret the words as stated will we look beyond those words to determine legislative intent. To apply a different policy would turn this Court into a legislative body, and doing that, of course, would be utterly inconsistent

> with the doctrine of separation of powers. See Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997)."

DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275-76 (Ala. 1998).

Subsection 15-22-54(a) puts a two-year maximum on a probationary term for a defendant who is "guilty of a misdemeanor" (emphasis added). Pack reads that two-year limit as applying to the aggregate term of probation a court can impose at a sentencing event involving more than one misdemeanor conviction.

The legislature has adopted such an approach for some sentences under the Alabama Presumptive and Voluntary Sentencing Standards ("the Standards"). Under the Standards, a "sentencing event" includes "all convictions sentenced at the same time, whether included as counts in one case or in multiple cases." Presumptive and Voluntary Sentencing Manual 25 (emphasis in original). The Standards include both a range of punishment for offenses and rules for determining the "most serious offense" at a sentencing event. The maximum range of punishment for the most serious offense is generally the maximum range of punishment for

the aggregate sentence for all convictions in that sentencing event. See, e.g., Showers v. State, 256 So. 3d 124, 127-28 (Ala. Crim. App. 2017).

But the plain meaning of the language in § 15-22-54(a) does not adopt such an approach and does not support Pack's position. The use of the singular noun "misdemeanor"—modified by the indefinite article "a"—shows the two-year limit applies to the probationary term imposed on each misdemeanor conviction. Had the legislature wanted to put in § 15-22-54(a) an aggregate limit on probationary terms ordered at a single sentencing event, it could have taken an approach like it did in the Standards for limiting an aggregate sentence of imprisonment. But the legislature did not take such an approach in § 15-22-54(a). That subsection simply puts a per-conviction limit on the duration of probation; it does not limit the aggregation of probationary terms.

Pack's reliance on this Court's decision in Minshew v. State, 975 So. 2d 395 (Ala. Crim. App. 2007), and the Alabama Supreme Court's decision in Ex parte Jackson, 415 So.2d 1169 (Ala. 1982), is unavailing. In Brand v. State, 93 So. 3d 985 (Ala. Crim. App. 2011), this Court held that the maximum set out in § 15-18-8, Ala. Code 1975, for the split portion of a

sentence was not an aggregate limit. Rather, this Court held, § 15-18-8 applied to the split sentence imposed on an individual conviction and thus did not prohibit consecutive split sentences. In reaching that decision, this Court rejected Brand's reliance on Minshew and Jackson, explaining that the parts of those cases on which he relied were dicta:

> "In Jackson, the Alabama Supreme Court held that, in the case of a youthful offender, § 15-19-6(a)(2), Ala. Code 1975,[6] did not permit a sentencing court to order consecutive periods of probation in excess of the maximum probationary period of three years as stated in that subsection. The Jackson Court, in a footnote in which it expressly acknowledged the question was not before it, stated that its 'discussion of consecutive probationary periods' applied equally to § 15-22-54(a), Ala. Code 1975. Jackson, 415 So. 2d at 1170 n.2.
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> "Relying on this dictum from note 2 in Jackson, this Court in Minshew held that, in the case of an adult felony offender, § 15-22-54(a) prohibited consecutive periods of probation in excess of the maximum probationary period of five years as stated in that subsection. Ultimately, however, the entire discussion in Minshew regarding § 15-22-54 was obiter dictum, because, as Minshew recognized, even if the appellant in Minshew had been correct in his claim that his consecutive probationary periods were illegal, his claim was moot because he was serving a sentence of life imprisonment without the possibility of parole. Minshew, 975 So. 2d at 397-98.
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> "Jackson and Minshew—and the principles upon which they were decided—are distinguishable from the present case. Jackson involved construction of the unique legislative scheme

established in the Youthful Offender Act. In Jackson, the Supreme Court noted:

> "'It is our judicial obligation to construe statutes in such a way as to carry out the will of the legislative branch of the government. That is, we are to ascertain and effectuate the intent of the legislature as expressed in the statute. By the enactment of the Youthful Offender Act, the legislature not only sought to provide an alternative method of sentencing minors, but, in fact, created a procedure separate and apart from the criminal procedure dealing with adults accused of the same offense. Raines v. State, 294 Ala. 360, 317 So. 2d 559 (1975). Code of 1975, § 15-19-6(a)(2) establishes the maximum probationary sentence or period allowable for a youthful offender, i.e., three years. That limitation on a sentence of probation is obviously one of the intended advantages of the Act. By comparison, the maximum probationary period for "adult" defendants found guilty of a felony is five years. Code of 1975, § 15-22-54(a). Hence, consecutive sentences of probation would thwart the intention of the legislature. Although the Youthful Offender Act does not prohibit the imposition of separate or multiple sentences of probation, clearly each probationary sentence must run from the time of sentencing rather than from the end of the preceding probationary period.
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> "'If the defendant had been convicted simultaneously of two separate felonies and placed under sentences of probation, the probationary time could not have exceeded three years. The sentences would have had to be served

> concurrently rather than consecutively. Occasionally, as here, a case will arise where a defendant currently under probation is sentenced under a subsequent conviction and placed on probation. That new term of probation must commence with sentencing, even though the first period of probation has not yet expired. Otherwise, the maximum time limitation set forth by the legislature would be nullified.'

"415 So. 2d at 1170-71 (emphasis added). This Court expressed a similar concern about upholding a legislative limitation on the length of probation in Minshew, which construed the five-year limit on a probationary period as set out in § 15-22-54(a), Ala. Code 1975. Minshew, 975 So. 2d at 397-98. Neither the Youthful Offender Act nor § 15-22-54(a) applies to the Split Sentence Act, which is at issue in Brand's case. Indeed, the Split Sentence Act authorizes sentencing courts to impose probationary periods much longer than three or five years. See, e.g., Hatcher v. State, 547 So. 2d 905, 906 (Ala. Crim. App. 1989) ('It is clear to this Court that the legislature, in enacting the provisions of § 15-18-8, intended to provide that a defendant could be sentenced to mandatory confinement for a period not exceeding three [now five] years, after which the defendant would be placed on probation for the remainder of his sentence, even if that sentence were 15 [now 20] years.'[8]). Thus, Jackson and Minshew are not determinative of the issue in Brand's case.

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"[6]Section 15-19-6(a)(2), Ala. Code 1975, provides: 'If a person is adjudged a youthful offender and the underlying charge is a felony, the court shall ... [p]lace the defendant on probation for a period not to exceed three years ....'

> "[8]The legislature amended § 15-18-8, Ala. Code 1975, in 2000 to increase the maximum period of confinement under § 15-18-8(a)(1) to 5 years and the length of sentence eligible for split-sentence consideration to 20 years. See Act No. 2000-759, Ala. Acts 2000. See also Ex parte McCormick, 932 So. 2d 124 (Ala. 2005) (discussing the history of amendments to the Split Sentence Act)."

Brand, 93 So. 3d at 988-90 (footnote 7 omitted).

This Court in Brand also addressed Brand's multiple 10-year terms of probation. This Court held that, even if Brand had to serve those terms consecutively, they were not illegal because each term was "within the ... limitation on probation in § 15-18-8." 93 So. 3d at 992.

Like Brand, Pack relies on the same dicta in Jackson and Minshew. But as shown above, the text of § 15-22-54(a) does not support Pack's position. And we will not rely on dicta to put words in the statutory text to reach the result Pack desires. See DeKalb Cnty. LP Gas Co., 729 So. 2d at 276 ("[I]t is our job to say what the law is, not to say what it should be. Therefore, only if there is no rational way to interpret the words as stated will we look beyond those words to determine legislative intent. To apply a different policy would turn this Court into a legislative body, and doing

that, of course, would be utterly inconsistent with the doctrine of separation of powers. See Ex parte T.B., 698 So. 2d 127, 130 (Ala. 1997).").

The circuit court did not exceed its authority when it followed the plea agreement and sentenced Pack to consecutive probationary terms.

The judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Cole and McCool, JJ., concur. Kellum, J., dissents, with opinion.

KELLUM, Judge, dissenting.

Based on the principles announced in this Court's decision in Minshew v. State, 975 So. 2d 395 (Ala. Crim. App. 2007), and Judge Welch's dissenting opinion in Brand v. State, 93 So. 3d 985 (Ala. Crim. App. 2011), in which I concurred, I respectfully dissent.