

Rel: July 9, 2021

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-20-0391

Aaron C. Sartain

v.

State of Alabama

Appeal from Marion Circuit Court
(CC-18-271.71)

PER CURIAM.

Aaron C. Sartain appeals the circuit court's decision to revoke his community-corrections status and to impose his original 10-year sentence.

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In 2019, Sartain was convicted of third-degree burglary, a violation of § 13A-7-7, Ala. Code 1975, and was sentenced to 10 years' imprisonment; that sentence was split, and he was ordered to serve 2 years in community corrections, followed by 5 years of probation. While he was in community corrections, Judie S. Osborn, director of the 25th Judicial Court Services, filed a "Report on Delinquent Inmate," alleging that Sartain had violated the conditions of his community-corrections sentence by committing three new offenses -- namely, possession of drug paraphernalia, assault/reckless endangerment, and attempting to elude. Concerning these violations Osborn alleged that

"[o]n November 22, 2020, [Sartain] received new charges of Possession of Drug Paraphernalia, Assault -- Reckless Endangerment, and Attempt to Elude by the Walker County Sheriff's Office. While on patrol, Officer Hall observed a vehicle leaving Dollar General with an expired tag. Officer Hall ran the tag and it came back a switched tag. Officer Hall attempted to stop the vehicle with emergency lights and siren when the vehicle immediately accelerated and driving erratically attempting to elude. The vehicle continued driving reckless at high rates of speed, crossing the centerline and running other drivers off the road. The vehicle turned into a private drive ... losing control in the gravel of the private drive and continued onto this property at high rates of speed. Residen[ts] of this property were outside in the yard at the time. The vehicle continued to flee onto a wood line area on

the edge of the property. The driver opened the door attempting to bail. Officer Hall positioned his vehicle where it was difficult for the driver to exit the vehicle, but the driver continued forward into the woods striking the passenger side of Officer Hall's vehicle. The driver exited the vehicle and fled into the woods. K9's were immediately notified and a perimeter was set up. While searching the vehicle a cell phone was located and open and logged into Aaron Sartain's Facebook page. A prescription bottle was also located with Sartain's name on the bottle. K9's arrived on scene and began tracking and eventually located Sartain near a creek."

(C. 10.) Osborn further alleged that Sartain had further violated the conditions of his community-corrections sentence by not paying community-corrections fees.

Osborn thereafter filed an addendum to her "Report on Delinquent Inmate," alleging that Sartain had violated the conditions of his community-corrections sentence by committing the following new offenses: unlawful distribution of a controlled substance, attempt to elude, possession of drug paraphernalia, and escape. (C. 12-13.)

On February 4, 2021, the circuit court held a revocation hearing, at which Sartain was represented by counsel. During that hearing, the State presented evidence from Walker County Investigators Krimson Culverson and Jim Brown, City of Dora Police Chief Jared Hall, and Osborn. At the

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close of the testimony, the circuit court found that Sartain had violated the conditions of his community-corrections sentence and concluded that the "sentence heretofore granted is revoked, and custody of [Sartain] is transferred to the Alabama Department of Corrections for him to serve the original ten-year sentence." (R. 40.) The circuit court memorialized its decision in a written order. (C. 8-9.) This appeal follows.

On appeal, Sartain's appointed appellate counsel has filed a "no-merit" brief in accordance with Anders v. California, 386 U.S. 738 (1967), explaining that she "has reviewed the record thoroughly and was not able to identify any legally non-frivolous issues, jurisdictional issues, or issues that would fall within an exception to the general rule of non-preservation." (Sartain's brief, p. 12.) On April 19, 2021, this Court issued an order notifying Sartain that his counsel had filed a "no-merit" brief and giving him until May 10, 2021, to present pro se issues to his counsel and to this Court. On May 26, 2021, Sartain filed an unsigned letter with this Court, in which he notes concerns he has with his case. We need not address those concerns, however, because, upon review of the

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record on appeal, this Court has recognized a jurisdictional error, requiring that this appeal be dismissed.

As set out above, Sartain was convicted in 2019 of third-degree burglary and was sentenced pursuant to Alabama's Split Sentence Act to 10 years' imprisonment, which sentence was split, and Sartain was ordered to serve 2 years in community corrections, followed by 5 years of probation. Sartain's sentence is illegal.

At the time Sartain was sentenced, § 15-18-8(b), Ala. Code 1975, provided, in pertinent part, as follows:

"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 ... 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 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.)

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Although his 10-year sentence and his 2-year community-corrections split sentence comply with § 15-18-8(b), Sartain's 5-year probationary term exceeds that which is authorized by § 15-18-8(b). Thus, Sartain's sentence did not comply with § 15-18-8(b).

In Ex parte McGowan, [Ms. 1190090, April 30, 2021] ___ So. 3d ___ (Ala. 2021), the Alabama Supreme Court explained:

"[A] sentence unauthorized by statute exceeds the jurisdiction of the trial court and is void. See Ex parte Batey, 958 So. 2d [339] at 342 [(Ala. 2006)] (citing Rogers v. State, 728 So. 2d 690, 691 (Ala. Crim. App. 1998)). Except 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. It matters not that a revocation order purports to remove an unauthorized portion of a sentence; the trial court must first have subject-matter jurisdiction to conduct the proceedings under Rule 27.6, Ala. R. Crim. P., and to enter the order of revocation."

___ So. 3d at ___ (emphasis added). In Ex parte McGowan, the Alabama Supreme Court held that, when a circuit court purports to revoke a defendant's probation when that defendant's sentence "was unauthorized

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in the first place," the circuit court's order purporting to revoke probation "is void" and must be vacated. Id.

Although Sartain's revocation hearing concerned the revocation of his community-corrections status and not his probation, the fact remains that his sentence was "unauthorized" by § 15-18-8(b), and the Alabama Supreme Court's decision in McGowan is clear: "[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."

Because the probationary term of Sartain's split sentence was "unauthorized," the circuit court's order purporting to revoke his community-corrections status is void. Thus, pursuant to Ex parte McGowan, the circuit court's revocation order must be vacated and we must "dismiss [Sartain's] appeal." ___ So. 3d at ___ (Shaw, J., concurring specially) ("'A void judgment will not support an appeal. It is [an appellate court's] obligation to vacate such a judgment and dismiss the appeal.'" (quoting Russell v. Fuqua, 176 So. 3d 1224, 1229 (Ala. 2015))).

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In so doing, we note that, "at this juncture," the only thing the circuit court may do is

" "conduct another sentencing hearing and ... reconsider the execution of [Sartain's 10]-year sentence[]. Because the [10]-year sentence[] [was] valid, the circuit court may not change [it]." ' Enfinger v. State, 123 So. 3d [535,] 538 [(Ala. Crim. App. 2012)] (quoting 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))."

Ex parte McGowan, ___ So. 3d at ___.

We also note that the record on appeal does not reflect whether Sartain's original sentence was imposed after a jury trial, pursuant to a plea agreement with the State, or as part of a blind plea.

"Therefore, it is impossible for this Court to determine whether resentencing [Sartain] will affect the voluntariness of his plea. As we noted in Calloway v. State, 860 So. 2d 900 (Ala. Crim. App. 2003) (opinion on return to remand and on second application for rehearing) ... :

" 'Rule 14.3(c)(2)(iv), Ala. R. Crim. P., provides that if a trial court rejects a plea agreement, it must "[a]fford the defendant the opportunity to withdraw the defendant's offer to plead guilty." ... The reasoning behind this is that "when a plea rests in any significant degree on a promise or agreement of the prosecutor ... so that it can be said to be part of the inducement or consideration, such promise or agreement must be

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fulfilled." Ex parte Otinger, 493 So. 2d [1362,] 1364 [(Ala. 1986)], citing Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971).'"

Austin v. State, 864 So. 2d 1115, 1119 (Ala. Crim. App. 2003). If Sartain's conviction was pursuant to a plea agreement with the State, the circuit court will be required to allow Sartain to withdraw his guilty plea if he elects to do so.

Based on the foregoing, Sartain's appeal is dismissed.

APPEAL DISMISSED.

Windom, P.J., and McCool and Minor, JJ., concur. Kellum and Cole, JJ., concur in the result.