

Rel: February 11, 2022

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0990

Kaitlyn Ann Bloodgood

v.

State of Alabama

**Appeal from Marion Circuit Court
(CC-18-489.70)**

McCOOL, Judge.

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Kaitlyn Ann Bloodgood appeals the Marion Circuit Court's order revoking her probation. For the reasons set forth herein, we dismiss the appeal.

It appears from the record before us that in August 2019, Bloodgood was convicted of first-degree robbery, see § 13A-8-41, Ala. Code 1975, and sentenced to 15 years and 1 day in prison. The circuit court split that sentence and ordered Bloodgood to serve 2 years and 6 months in prison followed by 5 years on probation.

In August 2021, Bloodgood's probation officer filed a delinquency report alleging that Bloodgood had violated the conditions of her probation by committing the new offense of resisting arrest.

On September 10, 2021, Bloodgood, along with counsel, appeared before the circuit court for a hearing. Following the hearing, the circuit court entered a written order revoking Bloodgood's probation and ordering her to serve the balance of her sentence in the custody of the Department of Corrections. After that order was entered, new counsel was appointed to represent Bloodgood, and counsel filed a motion to reconsider the probation revocation, or, in the alternative, a motion for a new hearing.

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It does not appear that the circuit court ruled on the motion to reconsider.

Bloodgood filed a timely notice of appeal.

On appeal, this Court recognizes that, under Ex parte McGowan, [Ms. 1190090, April 30, 2021] ___ So. 3d ___ (Ala. 2021), Bloodgood's original sentence is unauthorized because the split portion of the sentence does not comply with § 15-18-8(a), Ala. Code 1975, which provides:

"(a) When a defendant is convicted of an offense, other than a sex offense involving a child as defined in Section 15-20A-4, that constitutes a Class A or Class B felony offense, and receives a sentence of 20 years or less in any court having jurisdiction to try offenses against the State of Alabama and the judge presiding over the case is satisfied that the ends of justice and the best interests of the public as well as the defendant will be served thereby, he or she may order:

"(1) That a defendant convicted of a Class A or Class B felony be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three 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 such period and upon such terms as the court deems best.

"(2) That a defendant convicted of a Class A, Class B, or Class C felony with an imposed sentence of greater than 15 years but not more than 20 years be confined in a prison, jail-type institution, or treatment institution for a period of three to five years for Class A or Class B felony convictions and

for a period of three years for Class C felony convictions, during which the offender shall not be eligible for parole or release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that 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 the period upon the terms as the court deems best."

Bloodgood was convicted of first-degree robbery, which is a Class A felony. § 13A-8-41(c), Ala. Code 1975. Bloodgood was sentenced to 15 years and 1 day in prison.¹ That sentence was split and Bloodgood was ordered to serve 2 years and 6 months in prison followed by 5 years on probation. However, under 15-18-8(a), Ala. Code 1975, a split sentence for a defendant convicted of a Class A felony with an imposed sentence of greater than 15 years but not more than 20 years cannot include imprisonment for less than 3 years. Thus, because the circuit court did not have the authority under § 15-18-8(a) to order Bloodgood to serve two years and six months in prison, Bloodgood's sentence is unauthorized.

"In Ex parte McGowan, the Alabama Supreme Court explained:

¹The sentencing range for a Class A felony is "for life or not more than 99 years or less than 10 years." § 13A-5-6(a)(1), Ala. Code 1975.

" '[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). The Alabama Supreme Court held that, when a circuit court purports to revoke a defendant's probation when that defendant's sentence 'was unauthorized in the first place,' the circuit court's order purporting to revoke probation 'is void' and must be vacated. Id."

Shugart v. State, [Ms. CR-20-0067, May 28, 2021] ___ So. 3d ___, ___ (Ala. Crim. App. 2021).

Because Bloodgood's split sentence was unauthorized by statute, the circuit court had no jurisdiction to revoke Bloodgood's probation. Thus, the circuit court's order purporting to revoke Bloodgood's probation is

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void, and we order the circuit court to vacate that order. "At this juncture," the circuit court must conduct another sentencing hearing and reconsider the execution of Bloodgood's sentence. Ex parte McGowan, ___ So. 3d at ___. Because the sentence of 15 years and 1 day in prison was valid, the circuit court cannot change it. Id. Further, if Bloodgood's sentence was the result of a negotiated plea agreement, "Ex parte McGowan instructs that resentencing [Bloodgood] could affect the voluntariness of [Bloodgood's] guilty plea. ___ So. 3d at ___." Shugart, ___ So. 3d at ___ n.2. "Because 'a void order will not support an appeal,' see Ex parte Butler, 295 So. 3d 1115, 1117 (Ala. Crim. App. 2019), we dismiss [Bloodgood's] appeal from the circuit court's revocation order." Camp v. State, [Ms. CR-20-0326, September 3, 2021] ___ So. 3d ___, ___ (Ala. Crim. App. 2021).

APPEAL DISMISSED.

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