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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0992

Steven Bruce Thrash

v.

State of Alabama

Appeal from Calhoun Circuit Court
(CC-13-1450.72)

On Return to Remand

MINOR, Judge.

Steven Bruce Thrash appeals the Calhoun Circuit Court's revocation of his probation. Thrash, as the result of a negotiated plea agreement, pleaded guilty to the electronic solicitation of a child, see §

13A-6-122, Ala. Code 1975.¹ The circuit court sentenced Thrash, as a habitual felony offender, to 20 years' imprisonment but split that sentence and ordered Thrash to serve 2 years' imprisonment followed by 18 years' supervised probation.² After Thrash began serving his probation his probation officer moved to revoke his probation, alleging that Thrash had violated the Alabama Sex Offender and Community Notification Act ("ASORCNA"), § 15-20A-1 et seq., Ala. Code 1975. The circuit court held a revocation hearing and entered an order revoking Thrash's probation.

On appeal, Thrash argues that the circuit court lacked jurisdiction to revoke his probation because, he says, the split portion of his sentence

¹The indictment charged Thrash with violating § 13A-6-110, Ala. Code 1975, which had been repealed effective May 22, 2009, before the conduct made the basis of the charge against Thrash. See Act No. 2009-745, Ala. Acts 2009. In his brief, Thrash refers to this incorrect citation as "a distinction without a difference." (Thrash's brief, p. 1 n.1.)

²On original submission, the record was unclear about whether the circuit court split Thrash's sentence to serve 2 years' imprisonment followed by 18 years' supervised probation or 3 years' imprisonment followed by 17 years' supervised probation. By order issued March 23, 2022, we remanded this case for the circuit court to make specific written findings to clarify for the record the split portion of Thrash's sentence. On remand, the circuit court complied with our instructions and issued an order stating that Thrash "was sentenced to 20 years split to serve 2 years." (Record on Return to Remand, C. 6.)

did not comply with the version of § 15-18-8, Ala. Code 1975, in effect when he committed the offense. We agree.

Although Thrash did not raise this issue before the circuit court,

"we have held that when the circuit court does not have the authority to split a sentence under the Split Sentence Act, § 15-18-8, Ala. Code 1975, 'the manner in which the [circuit] court split the sentence is illegal[.]' Austin v. State, 864 So. 2d 1115, 1118 (Ala. Crim. App. 2003), and that '[m]atters concerning unauthorized sentences are jurisdictional.' Hunt v. State, 659 So. 2d 998, 999 (Ala. Crim. App. 1994). Thus, this Court may take notice of an illegal sentence at any time. See, e.g., Pender v. State, 740 So. 2d 482 (Ala. Crim. App. 1999)."

Enfinger v. State, 123 So. 3d 535, 537 (Ala. Crim. App. 2012). ""[A] trial court does not have [subject-matter] jurisdiction to impose a sentence not provided for by statute."" Ex parte McGowan, [Ms. 1190090, April 30, 2021] ___ So. 3d. ___, ___ (Ala. 2021) (quoting Ex parte Butler, 972 So. 2d 821, 825 (Ala. 2007), quoting in turn, Hollis v. State, 845 So. 2d 5, 6 (Ala. Crim. App. 2002)).

When Thrash committed the underlying offense of using a computer to solicit a child,³ § 15-18-8, Ala. Code 1975, provided, in relevant part:

³The record shows that Thrash committed the underlying offense in July 2009. (C. 6.) Because "the law in effect at the time of the commission

"(a) When a defendant is convicted of an offense, other than a criminal sex offense involving a child as defined in Section 15-20-21(5),^[4] which constitutes a Class A or B felony 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) In cases involving an imposed sentence of greater than 15 years, but not more than 20 years, the sentencing judge may order that the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding five years, but not less than three years, ... 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."

of the offense controls the prosecution," see Minnifield v. State, 941 So. 2d 1000, 1001 (Ala. Crim. App. 2005), we review this claim under the version of § 15-18-8 in effect in 2009.

⁴In 2009, § 15-20-21(5) defined "criminal sex offense involving a child" as "[a] conviction for any criminal sex offense in which the victim was a child under the age of 12 and any offense involving child pornography." The record shows that the child in Thrash's case was 13 years old (R. 10), and Thrash's underlying offense did not involve child pornography.

Although the 20-year sentence imposed on Thrash was within the authorized range for the offense to which Thrash pleaded guilty,⁵ the circuit court lacked the authority to impose a split sentence under § 15-18-8(a)(1) that included a term of confinement in prison for a period of less than 3 years. Thus, the circuit court improperly imposed a split sentence of 2 years' imprisonment followed by 18 years' probation.

"[A] sentence unauthorized by statute exceeds the jurisdiction of the trial court and is void. See Ex parte Batey, 958 So. 2d [339,] 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."

Ex parte McGowan, ___ So. 3d at ___ (emphasis added). Thrash's split sentence was illegal, and the circuit court lacked jurisdiction to revoke

⁵Thrash pleaded guilty to a Class B felony offense. Because Thrash had been previously convicted of three felonies, he could receive a sentence of life imprisonment or any term of not less than 20 years under the version of the Habitual Felony Offender Act in effect in 2009. See § 13A-5-9, Ala. Code 1975.

Thrash's probation imposed as a part of the unauthorized sentence. Thus, the probation-revocation order is void. See Shugart v. State, [Ms. CR-20-0067, May 28, 2021] ___ So. 3d ___, ___ (Ala. Crim. App. 2021) ("[W]hen a circuit court purports to revoke a defendant's probation when that sentence 'was unauthorized in the first place,' the circuit court's order purporting to revoke probation 'is void' and must be vacated.").

Because the circuit court's revocation order is void, the circuit court must vacate that order. At this juncture, the proper procedure would be for the circuit court to conduct another sentencing hearing and reconsider the execution of Thrash's sentence. See Ex parte McGowan, ___ So. 3d ___. "'Because the 20-year sentence was valid, the circuit court may not change it.'" Enfinger, 123 So. 3d at 538 (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)).

The record shows that Thrash's sentence result from a negotiated plea agreement, and "Ex parte McGowan instructs that resentencing [Thrash] could affect the voluntariness of [Thrash'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.

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App. 2019), we dismiss [Thrash'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, McCool, and Cole, JJ., concur.