

REL: 12/16/2011

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2011-2012

CR-09-1760

Feion Judio McQuieter

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-02-3144.10)

On Return To Remand

BURKE, Judge.

Feion Judio McQuieter argued that the circuit court improperly revoked his probation from his guilty-plea conviction for murder. He had been sentenced to a 20-year split sentence and had been ordered to serve 4 years of

CR-09-1760

incarceration followed by 5 years of probation. McQuieter had filed a petition requesting that the circuit court resentence him under §15-22-54.1. The circuit court denied McQuieter's petition and held that it lacked jurisdiction to modify McQuieter's sentence because the revocation resulted in a straight sentence. On December 17, 2010, this Court determined that circuit courts have jurisdiction to re-sentence eligible offenders whose probation had been revoked based on technical violations that resulted in straight sentences. This Court further found that, because the circuit court summarily denied McQuieter's petition based solely on its lack of jurisdiction, and because "the record does not indicate that the circuit court determined whether McQuieter satisfied the eligibility requirements", this cause was due to be remanded. McQuieter v. State, [Ms. CR-09-1760, December 17, 2010] ___ So. 3d ___, ___ (Ala. Crim. App. 2010).

On January 6, 2011, the circuit court filed its record and supplemental record on return to remand, which contained its order finding that McQuieter was not an eligible offender because he had pleaded guilty to felony murder on May 2, 2003, specifically to having, during the course of a kidnapping or

CR-09-1760

flight therefrom, caused the death of the victim by shooting him. Therefore, McQuieter was not convicted of a nonviolent offense and was not eligible for sentence modification pursuant to § 15-22-54.1 , Ala. Code 1975. The circuit court again ordered that McQuieter's petition be denied.

The circuit court properly denied McQuieter's petition because the court lacked jurisdiction to resentence him as McQuieter did not qualify as an eligible offender under § 15-22-54.1(a),¹ which requires:

"(a) Any person convicted of a nonviolent offense now serving a prison sentence based on revocation of probation shall be entitled to be resented upon petition to the sentencing court."

Because murder is a violent offense under § 12-25-32, Ala. Code 1975, McQuieter was not convicted of a nonviolent offense. Therefore, because McQuieter was a violent offender, the circuit court lacked jurisdiction to resentence him and its decision is due to be affirmed.

AFFIRMED.

¹Effective June 14, 2011, this subsection was amended to read: "(a) Any person now serving a prison sentence based on revocation of probation who would have been an eligible offender as defined in Section 15-22-54 at the time of revocation shall be entitled to be resented upon petition to the sentencing court."

CR-09-1760

Welch, P.J., and Windom, Kellum, and Joiner, JJ., concur.