REL: 12/14/2012
REL: 03/29/2013 as modified on dismissal of appeal on return to second remand

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2012-2013

CR-11-0458

Donald Leslie Enfinger

v.

State of Alabama

Appeal from Baldwin Circuit Court
(CC-08-74.70)

On Return to Remand

JOINER, Judge.

Donald Leslie Enfinger appeals the circuit court's decision to revoke his probation. Enfinger, as a result of a "plea bargain" (C. 8), pleaded guilty to sexual abuse of a

child under 12, see § 13A-6-69.1, Ala. Code 1975. The circuit court sentenced Enfinger, as an habitual felony offender, to 20 years' imprisonment; that sentence was split, and Enfinger was ordered to serve "time served in the custody of the Sheriff of Baldwin County, Alabama," followed by 3 years' supervised probation.[1] (Record on Return to Remand, C. 13-15.) Additionally, the circuit court ordered Enfinger to pay a $500 fine, a $100 crime-victims-compensation assessment, an attorney's fee, court costs, and restitution.

On November 17, 2011, the circuit court conducted a probation-revocation hearing at which the following evidence was presented: On February 9, 2009, Enfinger, who was 70 years old and homeless, pleaded guilty to sexual abuse of a child under 12, was sentenced, and was placed on probation. Because Enfinger was a homeless sex offender and had no permanent address, he was not immediately released from jail. When a "new statute" was enacted that allowed the release of homeless sex offenders who could not provide a fixed address, Enfinger

[1]On February 22, 2012, this Court remanded this case to the circuit court for that court to supplement the record on appeal with a copy of the sentencing order in CC-08-74. (Record on Return to Remand, C. 21.)

was released from jail and was told that he "had three days to come back in that time frame upon his release ... to register the appropriate paperwork with [the Baldwin County Sheriff's Office] for all of his registration." (R. 5.) When Enfinger was released, the Baldwin County Sheriff's Office was aware that he was "going to a prohibited area ... [b]ut the law [gave] him an opportunity in that three-day period to get his affairs in order." (R. 5.) At the end of the three-day period, Enfinger failed to register an appropriate address, and a warrant was issued for his arrest. Six days after Enfinger's release from jail, Deputy Chris Frank, of the Baldwin County Sheriff's Department Offender Compliance Unit, arrested Enfinger in a hospital in Fairhope. Following a hearing at which the State presented testimony, the circuit court entered a written order revoking Enfinger's probation. This appeal followed.

On appeal, Enfinger's appointed counsel filed a "no-merit" brief pursuant to Anders v. California, 386 U.S. 738 (1967), and a motion to withdraw. On January 13, 2012, this Court issued an order affording Enfinger an opportunity

to present pro se issues to his counsel and to this Court. Enfinger, however, failed to do so.

Reviewing the record in this case pursuant to Anders, however, we noticed a potentially meritorious issue with regard to Enfinger's sentence that warranted further briefing: specifically, whether the sentence imposed by the circuit court--20 years' imprisonment, split to serve "time served in the custody of the Sheriff of Baldwin County, Alabama," followed by 3 years' supervised probation--complies with the Split-Sentence Act, § 15-18-8(a), Ala. Code 1975. On March 29, 2012, this Court issued an order granting Enfinger's appointed counsel's motion to withdraw, appointing new counsel for Enfinger, and ordering Enfinger's new counsel to file a brief addressing the issue noticed by this Court.

Complying with this Court's order, Enfinger's new counsel timely filed a brief addressing the issue noticed by this Court. In his brief, Enfinger contends that this case needs to be remanded to the circuit court because, he says, (1) the circuit court erred when it accepted his guilty plea and sentenced him under the Split-Sentence Act set forth in § 15-18-8(a), Ala. Code 1975; and (2) the circuit court erred in

revoking his probation because "the State denied him due process by failing in its duty to obtain the registration information required under § 15-20A-7[, Ala. Code 1975,] as mandated and within the time specified by § 15-20A-9(a)(1)[, Ala. Code 1975]." (Enfinger's brief, p. 9.) The State, in its brief, concedes that "Enfinger's sentence is not authorized by law" and requests that this case be remanded to the circuit court to resentence Enfinger. (State's brief, p. 4.)

Initially, we note that, although the legality of Enfinger's sentence was not first argued in 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).

As explained above, Enfinger pleaded guilty to sexual abuse of a child under 12, see § 13A-6-69.1, Ala. Code 1975, and was sentenced, as an habitual felony offender, to 20 years' imprisonment and that sentence was split and Enfinger was ordered to serve "time served in the custody of the Sheriff of Baldwin County, Alabama," followed by 3 years' supervised probation. (Record on Return to Remand, C. 13-15.) The circuit court, however, did not have the authority, under the Split-Sentence Act, § 15-18-8, Ala. Code 1975, to split Enfinger's sentence or to impose a term of probation.

Section 15-18-8(a), Ala. Code 1975, specifically exempts from the Split-Sentence Act those offenders who have been convicted of "a criminal sex offense involving a child as defined in Section 15-20-21(5)." Section 15-20-21(5), Ala. Code 1975, defines "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." Additionally, § 15-18-8(b), Ala. Code 1975, specifically precludes the circuit court from imposing a term of probation for offenders convicted of "a criminal sex offense involving a child as defined in Section 15-20-21(5),

which constitutes a Class A or B felony." Thus, the circuit court did not have the authority to either impose a split sentence or to impose a term of probation. See § 15-18-8(a) and (b), Ala. Code 1975. Therefore, the "execution of [Enfinger's] sentence is illegal." Simmons v. State, 879 So. 2d 1218, 1222 (Ala. Crim. App. 2003).[2]

In cases where the circuit court had no authority to impose the Split-Sentence Act, the proper remedy has been to remand the case to the circuit court for that court to remove the split portion of the sentence. See e.g., Simmons, supra (holding that, the circuit court had no authority to split a sentence and remanding the case to the circuit court for that court to set aside the split portion of the sentence), Morris v. State, 876 So. 2d 1176 (Ala. Crim. App. 2003) (same); cf., Moore v. State, 871 So. 2d 106 (Ala. Crim. App. 2003) (holding that, although the circuit court had authority to split the sentence, the circuit court split the sentence in an improper manner and remanding the case to the circuit court for that

[2]As stated above, the State concedes that Enfinger's sentence "is not authorized by law" and requests that this Court remand this case to the circuit court for that court to resentence Enfinger. (State's brief, p. 5.)

court to "reconsider the execution" of the sentence), Austin, supra (same).

Those cases, however, do not contemplate the specific facts of this case--that is, where the circuit court imposes a split sentence and a term of probation under the Split-Sentence Act when it had no authority to do so and later conducts a probation-revocation hearing at which it revokes a defendant's probationary term and orders that the defendant serve the remainder of his underlying sentence in prison. Thus, the issue before this Court is whether the circuit court's improper imposition of the Split-Sentence Act can be remedied by the circuit court's conducting a probation-revocation hearing and revoking a defendant's probation.

As discussed above, because the nature of Enfinger's guilty-plea conviction exempts him from application of the Split-Sentence Act, the circuit court had no authority to apply the Split-Sentence Act to Enfinger and no authority to impose a term of probation on Enfinger. See § 15-18-8(a) and (b), Ala. Code 1975. Because the circuit court had no authority to split Enfinger's sentence or to impose a term of probation, it likewise had no authority to conduct a

probation-revocation hearing and revoke Enfinger's probation under § 15-18-8(c), Ala. Code 1975, which provides, in part, that under the Split-Sentence Act the circuit court "may revoke or modify any condition of probation or may change the period of probation." Because the circuit court had no authority to impose a term of probation or to revoke probation, the circuit court's order revoking Enfinger's probation is void.

Because the circuit court's probation order is void, the sentence in this case is analogous to the sentences at issue in Simmons and Morris. Thus, like those cases, we must remand this case to the circuit court for that court to remove the split portion of Enfinger's sentence, see e.g., Simmons, supra; Morris, supra. To do so, the circuit court must "conduct another sentencing hearing and ... reconsider the execution of [Enfinger's] 20-year sentence. Because the 20-year sentence was valid, the circuit court may not change it." Austin, 864 So. 2d at 1119; Moore, 871 So. 2d at 109-10.

We recognize that the circuit court's revocation of Enfinger's probation in this case appears to reach a result that is no different than the result that was obtained in

Simmons and Morris--i.e., the probation revocation in essence removed the unauthorized split. Those cases, however, did not involve merely the removal of an improper split. In each of those cases, the circuit court was instructed to consider on remand whether the removal of the split would affect the voluntariness of the defendant's guilty plea. Further, the circuit court in each case was instructed that, if the defendant moved to withdraw his guilty plea, it should allow the defendant to do so. See Simmons, supra; Morris, 876 So. 2d at 1178 ("Because the split sentence was a term of the appellant's plea agreement, if the appellant moves to withdraw his guilty plea, the circuit court should grant the motion. See Austin v. State, 864 So. 2d 1115 (Ala. Crim. App. 2003)."). To hold that the circuit court can remedy the imposition of an unauthorized split sentence by revoking a defendant's probation, however, would prevent that defendant from being able to move to withdraw his guilty plea and thus would treat him differently than the defendants in Simmons and Morris were treated--i.e., after the circuit court conducts a resentencing, the defendant would not have the assistance of appointed counsel to move to withdraw his guilty plea under

Rule 14.4(e), Ala. R. Crim. P.; instead, an indigent defendant would have to raise, pro se in a Rule 32 petition, the issue that the defendant's guilty plea was involuntary.

Furthermore, holding that a circuit court can remedy the imposition of an improper split sentence by revoking a defendant's probation could lead to an absurd result. For example, a defendant serving a sentence that is improper under the Split-Sentence Act could be charged with violating the terms and conditions of his probation and the circuit court could thereafter revoke that defendant's probation. On appeal, the defendant could contend that the evidence was insufficient to support the revocation of his probation, and if, after a review of the record, this Court determined that the defendant is, in fact, correct, we would be forced to hold that, although the evidence was insufficient to support the revocation, the imposition of the remainder of his sentence is correct because the circuit court could not have imposed a split sentence. Such a result is unsound and untenable.

Because the circuit court did not have the authority to revoke Enfinger's probation, its order revoking Enfinger's probation is vacated, and this case is remanded to the circuit

court for that court to resentence Enfinger in accordance with this opinion.

Additionally, we note that, although the record indicates that Enfinger was convicted of sexual abuse of a child under 12 as the result of a "plea bargain" (C. 8), the record is unclear as to whether Enfinger's sentence was part of the plea bargain. Thus, "it is impossible for this Court to determine whether resentencing [Enfinger] will affect the voluntariness of his plea." Austin, 864 So. 2d at 1119. If the split sentence was a term of Enfinger's "plea bargain," and, if he moves to withdraw his guilty plea, the circuit court should conduct a hearing to determine whether withdrawal of the plea is necessary to correct a manifest injustice. See Rule 14.4(e), Ala. R. Crim. P.

Based on the foregoing, the judgment of the circuit court is reversed, and this case is remanded to the circuit court for that court to resentence Enfinger in accordance with this opinion. The circuit court shall take all necessary action to see that the circuit clerk makes due return to this Court at the earliest possible time and within 42 days after the

release of this opinion.[3] The return to remand shall include a transcript of the proceedings conducted on remand.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Welch, Kellum, and Burke, JJ., concur. Windom, P.J., dissents, with opinion.

[3]Although Enfinger also argues on appeal that the circuit court erred in revoking his probation because, he says, "the State denied him due process by failing in its duty to obtain the registration information required under § 15-20A-7 as mandated and within the time specified by § 15-20A-9(a)(1)," our holding that Enfinger must be resentenced renders moot the issue whether the revocation of his probation was inappropriate.

[Substituted p. 13]

WINDOM, Presiding Judge, dissenting.

I agree with the majority that the circuit court did not have the authority under §§ 15-18-8(a) and 15-18-8(b), Ala. Code 1975, to split Enfinger's 20-year sentence upon his conviction for sexual abuse of a child less than 12, see § 13A-6-69.1, Ala. Code 1975. I, however, disagree with the majority's decision to reverse the circuit court's judgment revoking Enfinger's probation and to remand this cause with instructions for the circuit court to resentence Enfinger. Specifically, I believe that when the circuit court revoked Enfinger's probation and imposed Enfinger's original sentence, it removed the illegal split and rendered moot any error in the circuit court's decision to split the sentence. Therefore, I respectfully dissent.

Initially, it is important to note that Enfinger's sentence, as a habitual felon with two prior felonies, to 20 years in prison for the crime of sexual abuse of a child less than 12, see § 13A-6-69.1, Ala. Code 1975, a class B felony, was within the statutory range of punishment. See § 13A-5-9(b)(2), Ala. Code 1975 ("In all cases when it is shown that a criminal defendant has been previously convicted of any two

felonies and after such convictions has committed another felony, he or she must be punished ... [o]n conviction of a Class B felony, [to] imprisonment for life or [to] any term of not more than 99 years but not less than 15 years."). Accordingly, Enfinger's sentence of 20 years in prison was not illegal.

However, the manner in which Enfinger was to execute his sentence -- a split sentence with time served followed by 3 years of probation -- was illegal. Before trial, Enfinger pleaded guilty to sexual abuse of a child less than 12, a criminal sex offense against a child. Because Enfinger was convicted of a criminal sex offense against a child, the circuit court did not have the authority to impose a split sentence. See § 15-18-8(a), Ala. Code 1975 (authorizing a circuit court to split a defendant's sentence "[w]hen [that] defendant is convicted of an offense, other than a criminal sex offense involving a child ..." (emphasis added)). Thus, the circuit court should not have split Enfinger's 20-year sentence.

The circuit court's order illegally splitting Enfinger's sentence does not, however, render Enfinger's 20-year sentence

illegal. Instead, the circuit court's order rendered illegal only the manner in which the lawful sentence was to be executed. See Berry v. State, 698 So. 2d 225, 227 (Ala. Crim. App. 1996) (recognizing that an underlying sentence may be valid although "the manner in which the trial court split the sentence" is illegal); Moore v. State, 871 So. 2d 106, 108 (Ala. Crim. App. 2003) (recognizing the difference between an illegal sentence, a sentence outside the statutory range of punishment, and the illegal execution of a sentence, an improper split of an otherwise legal sentence); Havis v. State, 710 So. 2d 527 (Ala. Crim. App. 1997) (same); Wood v. State, 602 So. 2d 1195 (Ala. Crim. App. 1992) (same).

Thus, Enfinger was originally given a legal sentence that was ordered to be executed in an illegal manner. The illegal manner in which Enfinger was to serve his sentence does not, however, require this Court to remand this cause for re-sentencing because, on November 17, 2011, the circuit court revoked Enfinger's probation and ordered Enfinger to serve his original 20-year sentence, thus removing the split. Cf. Morris v. State, 876 So. 2d 1176, 1178 (Ala. Crim. App. 2003) (recognizing that the remedy for an illegal split of a legal

sentence is to "remand th[e] case to the circuit court with instructions [for] that court [to] set aside the split portion of the appellant's sentence" (emphasis added)); Simmons v. State, 879 So. 2d 1218, 1222 (Ala. Crim. App. 2003) (same); Johnson v. State, 778 So. 2d 252, 253 (Ala. Crim. App. 2000) ("'[A] probationer is not entitled to credit on his sentence for time served on probation.'") (quoting Chapman v. State, 43 Ala. App. 693, 694, 199 So. 2d 865, 866 (1967)). In other words, by revoking Enfinger's probation and removing the illegal split, the circuit court remedied the illegality of the manner in which Enfinger was executing his sentence, and Enfinger is now properly executing a legal 20-year sentence.

Because the probationary period of Enfinger's illegal split sentence has been removed and he is now properly executing a legal 20-year sentence, the circuit court's error in originally splitting his sentence and allowing him to execute a portion of his sentence on probation is moot. See Kenney v. State, 949 So. 2d 192, 194 (Ala. Crim. App. 2006) (holding that the circuit court's imposition of an illegal probationary period was rendered moot when the appellant's probation was revoked); Minshew v. State, 975 So. 2d 395,

397-98 (Ala. Crim. App. 2007) (holding that the circuit court's imposition of an illegal probationary period was rendered moot by the fact that he was subsequently sentenced to life in prison without the possibility of parole); Bailey v. State, 355 Md. 287, 301, 734 A.2d 684, 692 (1999) (holding that an illegal term of probation will be rendered moot if the appellant's probation is revoked); People v. Cortese, 79 A.D.3d 1281, 1284, 913 N.Y.S.2d 383, n.1 (2010) (holding that the improper calculation of a probationary period was rendered moot when the appellant's probation was revoked); Moore v. State, (No. M2003-00332-CCA-R3-PC, Feb. 17, 2004) n.1 (Tenn. Crim. App. 2004) (not selected for publication in the South Western Reporter) (holding that the appellant was not eligible to be sentenced to community corrections under Tennessee law because he was convicted of a crime of violence in which a weapon was used; however, "since the community corrections sentence has been revoked, ... this ... issue is moot); Cf. Stephens v. State, 823 So. 2d 180, 181 (Fla. Dist. Ct. App. 2002) ("The appellant now claims that the original scoresheet that was prepared for sentencing in 1998 contained errors. Because the trial court prepared a new scoresheet when it

sentenced the appellant upon revocation of probation, and because this new scoresheet did not contain the errors that allegedly existed in the original scoresheet, the appellant's complaints are moot."); Madison v. State, 999 So. 2d 561, 570 (Ala. Crim. App. 2006) (holding that a death-row inmate's challenge to the manner in which his sentence would be executed, i.e., electrocution, was rendered moot when the legislature changed the manner of execution to lethal injection because the death-row inmate was no longer sentenced to die by electrocution).

The majority asserts that this issue is not moot:

> "Because the circuit court had no authority to split Enfinger's sentence or to impose a term of probation, it likewise had no authority to conduct a probation-revocation hearing and revoke Enfinger's probation under § 15-18-8(c), Ala. Code 1975, which provides, in part, that under the Split-Sentence Act the circuit court 'may revoke or modify any condition of probation or may change the period of probation.' Because the circuit court had no authority to impose a term of probation or to revoke probation, the circuit court's order revoking Enfinger's probation is void."

___ So. 3d at ___. I disagree.

As the majority recognizes, this Court has "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 ... '[m]atters concerning unauthorized sentences are jurisdictional.' Hunt v. State, 659 So. 2d 998, 999 (Ala. Crim. App. 1994)." ___ So. 3d at ___. Further, it is well settled that a court can and should correct a jurisdictional error at any time. See Ex parte Peterson, 884 So. 2d 924, 926 (Ala. Crim. App. 2003) ("A court can notice a jurisdictional defect at any time and has a duty to correct the defect."). Here, the circuit court corrected a jurisdictional defect -- it removed the illegality in the manner in which Enfinger executes his sentence -- and, because the defect was jurisdictional, the circuit court had the authority to do so. Id.

Further, if the circuit court's probation-revocation order is, as the majority holds, void, then this Court must dismiss the appeal. It is well settled in this State that:

> "'A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.' Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008)."

MPQ, Inc. v. Birmingham Realty Co., 78 So. 3d 391, 394 (Ala. 2011) (emphasis added). This Court must dismiss an appeal from a void judgment "[b]ecause [if] the trial court's actions were void, there is no judgment to support an appeal." D.H. v. State, 24 So. 3d 1166, 1169 (Ala. Crim. App. 2009). The majority, however, has not dismissed Enfinger's appeal from the revocation of his probation. Instead, the majority holds that the circuit court's order is void, reverses that judgment, and remands the cause for resentencing. However, the circuit court's judgment is not, in my opinion, void. Rather, it was a valid order correcting a jurisdictional error in the manner in which Enfinger executes his sentence. Further, whether the order purported to rule on a probation-revocation proceeding, a postconviction proceeding pursuant to Rule 32, Ala. R. Crim. P., or a request to modify a sentence, the circuit court's order corrected a jurisdictional defect; therefore, the circuit court had the authority and the duty to do so. See Peterson, 884 So. 2d at 926. Cf. Ex parte Deramus, 882 So. 2d 875 (Ala. 2002) (holding that substance, as opposed to style, controls). Because the circuit court had the authority to correct and did correct the jurisdictional

error in the execution of Enfinger's sentence, that error is moot and does not entitle Enfinger to any relief.

The majority also states that this issue is not moot because the illegal manner in which Enfinger was allowed to execute his sentence may affect the voluntariness of Enfinger's guilty plea, i.e., Enfinger could argue that he did not receive the sentence for which he bargained and pleaded guilty. Specifically, the majority rationalizes:

> "To hold that the circuit court can remedy the imposition of an unauthorized split sentence by revoking a defendant's probation, however, would prevent that defendant from being able to move to withdraw his guilty plea and thus would treat him differently than the defendants in Simmons[v. State, 879 So. 2d 1218 (Ala. Crim. App. 2003),] and Morris[v. State, 876 So. 2d 1176 (Ala. Crim. App. 2003),] were treated -- i.e., after the circuit court conducts a resentencing, the defendant would not have the assistance of appointed counsel to move to withdraw his guilty plea under Rule 14.4(e), Ala. R. Crim. P.; instead, an indigent defendant would have to raise, pro se in a Rule 32 petition, the issue that the defendant's guilty plea was involuntary."

___ So. 3d at ___.

First, the voluntariness of Enfinger's guilty plea is not a jurisdictional issue and is not, at this point, properly before this Court. See Fincher v. State, 837 So. 2d 876 (Ala.

Crim. App. 2002) (holding that a challenge to the voluntariness of a guilty plea is not jurisdictional). Instead, the only issue before this Court is whether the manner in which Enfinger is currently executing his sentence is illegal, and, as detailed above, Enfinger is now properly executing a legal sentence.

Second, the record does not show that the manner in which Enfinger was to execute his sentence was part of his guilty plea. As the majority notes:

> "[A]lthough the record indicates that Enfinger was convicted of sexual abuse of a child under 12 as the result of a 'plea bargain' (C. 8),[4] the record is unclear as to whether Enfinger's sentence was part of the plea bargain. Thus, 'it is impossible for this Court to determine whether resentencing [Enfinger] will affect the voluntariness of his plea.' Austin [v. State,] 864 So. 2d [1115,] 1118 [(Ala. Crim. App. 2003)]."

___ So. 3d ___. The desire to see that Enfinger has counsel to raise a possible hypothetical issue that is collateral to the issue before this Court in this appeal is, in my opinion, insufficient to justify overlooking the fact that Enfinger is

[4]I note that the record does not establish that Enfinger pleaded guilty as part of a plea bargain. Rather, the only indication that Enfinger pleaded guilty pursuant to a plea bargain is a statement made by Enfinger's counsel in a motion to reconsider the revocation of Enfinger's probation.

currently executing a legal 20-year sentence in a proper manner. In other words, whether or not Enfinger gets counsel to raise a possible, future claim that is unrelated to this appeal does not justify deciding the merits of a moot issue.

Finally, as the majority recognizes, Enfinger can, if the split sentence was part of a plea bargain, challenge the voluntariness of his guilty plea in a postconviction petition pursuant to Rule 32, Ala. R. Crim. P. Further, Enfinger may, based on the procedural history of this case, be able to overcome the procedural bars contained in Rule 32.2, Ala. R. Crim. P. See Ex parte Ward, 46 So. 3d 888, 897 (Ala. 2007); Ex parte Pierce, 851 So. 2d 606, 616 (Ala. 2000). During Rule 32 proceedings, Enfinger may, if it is true, establish that the split portion of his sentence was part of his plea bargain; therefore, the illegality of the split rendered his plea involuntary. With another remedy available, this Court should not overlook the fact that the impropriety in the manner in which Enfinger was to execute his sentence is now moot.

Because the illegality in the execution of Enfinger's sentence has been corrected, the issue upon which the majority

reverses the circuit court's judgment is moot. Accordingly, I respectfully dissent.