Rel: September 16, 2022

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210194

Ex parte Whitney Owens Jones

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Whitney Owens Jones

v.

State of Alabama)

(Mobile Circuit Court: CC-18-5443;
Court of Criminal Appeals: CR-18-0997)

STEWART, Justice.

In January 2018, Whitney Owens Jones, an inmate in the Mobile County Metro Jail and a participant in the jail's work-release program, left her work-release job and did not return to the work-release barracks. As a result, Jones was charged with, and convicted of, second-degree escape, a felony. See Ala. Code 1975, § 13A-10-32. The Alabama Court of Criminal Appeals affirmed Jones's conviction. We granted certiorari review to consider whether an inmate, like Jones, who escapes from a county work-release program authorized pursuant to Ala. Code 1975, §§ 14-8-30 through 14-8-44 ("the county work-release statutes"), may be convicted of escape pursuant to one of the escape statutes in the Alabama Criminal Code,[1] Ala. Code 1975, §§ 13A-10-30 through 13A-10-33 ("the escape statutes"), which would be punishable as a felony, or whether such an escape is punishable only as a misdemeanor pursuant to Ala. Code 1975, §§ 14-8-42 and 14-8-43. We conclude that escapes from county work-release programs are governed by the escape statutes. Accordingly, we affirm the judgment of the Alabama Court of Criminal Appeals.

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[1]The Alabama Criminal Code is codified as Title 13A of the Alabama Code of 1975. See Ala. Code 1975, § 13A-1-1 ("This title shall be known and may be cited as the 'Alabama Criminal Code.' ").

Facts and Procedural History

The Court of Criminal Appeals summarized the pertinent facts as follows:

> "In January 2018, Jones entered a work-release program while she was incarcerated in the Mobile County Metro Jail on a pending charge of fourth-degree theft of property, a misdemeanor. Jones's participation in the work-release program allowed her to work the day shift at Filters Now, a business in Creola, Alabama. After a few weeks in the program, Jones and another inmate left Filters Now in a vehicle and did not return to the work-release barracks. The 'in-and-out sheet' includes a notation that Jones 'left at 16:00 and did not return.' The comment section includes the note 'escape.'
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> "....
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> "In October 2018, a Mobile County grand jury indicted Jones for third-degree escape, see § 13A-10-33, Ala. Code 1975. In March 2019, the State moved to amend the indictment to charge Jones with second-degree escape, see § 13A-10-32, Ala. Code 1975. Both third-degree and second-degree escape are Class C felonies. The circuit court granted the State's motion to amend.
>
> "Jones moved to dismiss the amended indictment. In the motion, Jones argued that she was a county inmate in the work-release program and that, under Webb v. State, 539 So. 2d 343 (Ala. Crim. App. 1987), she could be guilty of no more than a misdemeanor under § 14-8-42 and § 14-8-43, Ala. Code 1975. The circuit court denied the motion, and Jones's case went to trial.
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> "Jones moved for a judgment of acquittal at the close of the State's evidence and again at the close of all the evidence.

> Jones argued in each motion that she could not be guilty of escape, a felony. The circuit court denied those motions. The circuit court also denied Jones's requests for jury instructions related to her argument that she could not be guilty of felony escape."

Jones v. State, [Ms. CR-18-0997, Apr. 23, 2021] __ So. 3d __, __ (Ala. Crim. App. 2021) (footnotes and citations to the record omitted).

The Court of Criminal Appeals rejected Jones's argument that she could have been convicted only of a misdemeanor pursuant to §§ 14-8-42 and 14-8-43. That court concluded that the record did not establish that Jones was a "county inmate" at the time of her escape.

Analysis

Jones was charged with and convicted of second-degree escape pursuant to § 13A-10-32, one of the three statutes in the Alabama Criminal Code defining and classifying escape offenses. Escape in the second degree is defined as follows: "A person commits the crime of escape in the second degree if he escapes or attempts to escape from a penal facility." § 13A-10-32(a). Furthermore, "[e]scape in the second degree is a Class C felony." § 13A-10-32(b). We note that Jones was initially indicted for third-degree escape, a Class C felony, see § 13A-10-33(b), which is defined as an "escape[] or attempt[ed] ... escape from

custody." § 13A-10-33(a). Jones, however, argues that, because she was a county inmate in a county work-release program, her conduct falls under § 14-8-42.[2] That section provides:

> "The willful failure of an inmate to remain within the extended limits of his confinement or to return to the place of confinement within the time prescribed shall be deemed an escape from a state penal institution in the case of a state inmate and an escape from the custody of the sheriff in the case of a county inmate and shall be punishable accordingly."

Furthermore, § 14-8-43 provides that "[a]nyone violating any of the [county work-release statutes] shall be guilty of a misdemeanor." Section 14-8-43 has been interpreted by the Court of Criminal Appeals as providing the penalty for a violation of § 14-8-42. See, e.g., Cork v. State, 603 So. 2d 1127, 1128 (Ala. Crim. App. 1992). Jones argues that, because she was purportedly a "county inmate,"[3] her conduct in failing to return

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[2]Jones has not argued that the evidence presented at trial was insufficient to convict her of second-degree escape. For example, she has not contended that her place of employment did not constitute a "penal facility." See, e.g., Mays v. State, 144 So. 3d 507, 510 (Ala. Crim. App. 2013) (holding that defendant on "house arrest" did not escape from a "penal facility"). Accordingly, that issue (and any other related issues not raised by Jones) are not properly before this Court.

[3]"County inmate" is defined by § 14-8-30(1), Ala. Code 1975, as "[a] person convicted of a crime and sentenced to a term of confinement of one year's duration or less." A "state inmate," on the other hand, is "[a]

from her work-release job was punishable only as a misdemeanor under §§ 14-8-42 and 14-8-43 and that her felony conviction for second-degree escape was, therefore, improper. In support of her argument, Jones relies on Webb v. State, 539 So. 2d 343 (Ala. Crim. App. 1987), and cases following Webb, for the proposition that "a county inmate ... who fails to return from work release is guilty only of a misdemeanor under § 14-8-42." 539 So. 2d at 345.

We begin our analysis by noting that county work-release programs like the one in which Jones was participating are authorized pursuant to the county work-release statutes, which were adopted by the legislature in 1976 for the purpose of authorizing counties to establish work-release programs for county inmates and state inmates in county custody. Ala. Acts 1976, Act No. 637. Similar to Ala. Code 1975, §§ 14-8-1 through 14-8-10 ("the state work-release statutes"), which were adopted before 1976, the county work-release statutes provide that the failure of an inmate to return from his or her work-release job constitutes "an escape," § 14-8-42, and that such an inmate is "guilty of a misdemeanor." § 14-8-43; see

person convicted of a crime and sentenced to a term of confinement of more than one year's duration." § 14-8-30(2).

also Miller v. State, 349 So. 2d 129, 131 (Ala. Crim. App. 1977) (holding, in a case decided before the effective date of the Alabama Criminal Code, that, under the state work-release statutes, an escape constituted a misdemeanor).

At the time of its 1976 enactment, § 14-8-42 joined what was then a variety of escape statutes setting forth various species of escape offenses with wide disparities in the severity of punishments. See, e.g., Ala. Code 1975, former §§ 13-5-60 through 13-5-71, and Jacques v. State, 409 So. 2d 876, 879 (Ala. Crim. App. 1981) (noting the "great difference" between punishments provided in various former escape statutes). In 1977, however, the legislature adopted the Alabama Criminal Code with the purpose of providing an entirely new criminal code for the State of Alabama effective January 1, 1980. See Ala. Acts 1977, Act No. 607 (Title), and Ala. Code 1975, § 13A-1-11. Among the comprehensive changes it made to the then-existing criminal laws, the Alabama Criminal Code recategorized escape offenses into three distinct classifications -- first degree, second degree, and third degree. Ala. Code 1975, §§ 13A-10-31, 13A-10-32, and 13A-10-33. According to the Commentary to §§ 13A-10-31 through 13A-10-33 (which follows § 13A-

10-33), these new escape provisions were intended to replace Alabama's former "helter-skelter treatment of escape" with three classifications of escape offenses that increased in severity of punishment based on "(1) use of force[] and (2) the seriousness of the crime that led to the inmate's detention." Commentary to §§ 13A-10-31 through 13A-10-33 (noting that the "previous law provided a helter-skelter treatment of escape" and was "lack[ing] any particular pattern or scheme"). Furthermore, according to that Commentary, the scheme was intended to cover all escapes, with the statute defining and classifying third-degree escape -- § 13A-10-33 -- as a catch-all provision "applicable to all escapes." Id. (emphasis added).

Escape in the first degree is defined by § 13A-10-31:

> "(a) A person commits the crime of escape in the first degree if:
>
> > "(1) He employs physical force, a threat of physical force, a deadly weapon or a dangerous instrument in escaping or attempting to escape from custody; or
> >
> > "(2) Having been convicted of a felony, he escapes or attempts to escape from custody imposed pursuant to that conviction.
>
> > "(b) Escape in the first degree is a Class B felony."

Escape in the second degree is defined by § 13A-10-32:

> "(a) A person commits the crime of escape in the second degree if he escapes or attempts to escape from a penal facility.
>
> "(b) Escape in the second degree is a Class C felony."

Finally, escape in the third degree is defined by § 13A-10-33:

> "(a) A person commits the offense of escape in the third degree if he escapes or attempts to escape from custody.
>
> "(b) Escape in the third degree is a Class C felony."[4]

Section 13A-10-30(b)(1) defines "custody" as:

> "A restraint or detention by a public servant pursuant to a lawful arrest, conviction or order of court, but does not include mere supervision of probation or parole, or constraint incidental to release on bail."

Act No. 607, Ala. Acts 1977, the act initially adopting the Alabama Criminal Code, expressly repealed previous statutes regarding escape, but, for reasons that are not entirely clear, § 14-8-42 was not included among the statutes that were expressly repealed.[5] See Ala. Acts 1977,

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[4]Escape in the third degree was originally punishable as a Class A misdemeanor. Ala. Acts 1977, Act No. 607, § 4608. Before the Alabama Criminal Code became effective, however, § 13A-10-33 was amended to make third-degree escape punishable as a Class C felony. Ala. Acts 1978, Act No. 770, p. 1110.

[5]We note that, by enacting the Alabama Criminal Code, the legislature adopted the proposed revised criminal code published by the Alabama Law Institute in 1974 ("the proposed code"). See Proposed

Act No. 607, § 9901. As this case demonstrates, however, the conduct covered by § 14-8-42 substantially overlaps with the conduct covered under the escape statutes. For instance, § 14-8-42 defines the willful failure of an inmate in a county work-release program to return to his or her place of confinement as either "an escape from a state penal institution" or "an escape from ... custody." This, of course, is the precise conduct covered under the escape statutes. See § 13A-10-31 (defining escape in the first degree as an escape or an attempted escape "from custody" coupled with the use of, or threatened use of, physical force, a deadly weapon, or a dangerous instrument); § 13A-10-32 (defining second-degree escape as an escape or an attempted escape from a penal facility); and § 13A-10-33 (defining third-degree escape as an escape or an attempted escape from custody). Indeed, Alabama courts have

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Revision with Commentary -- Alabama Criminal Code (Ala. L. Inst. 1974). The proposed code included tables providing which code sections would be repealed upon adoption of the Alabama Criminal Code. The county work-release statutes, however, were enacted in 1976 and, thus, were not referenced in the proposed code. The fact that the proposed code predated the county work-release statutes may account for why the 1977 act adopting the proposed code did not expressly repeal § 14-8-42. Nevertheless, that act provided that "[a]ll laws or parts of laws which conflict with this act are hereby repealed." Ala. Acts 1977, Act No. 607, § 9902.

recognized that an escape from a work-release program, or a similar program, falls within the conduct covered under the escape statutes. See Alexander v. State, 475 So. 2d 625 (Ala. Crim. App. 1984) (holding that an inmate participating in a state work-release program who failed to return from his place of employment was properly convicted of first-degree escape pursuant to § 13A-10-31), rev'd on other grounds, Ex parte Alexander, 475 So. 2d 628 (Ala. 1985); Ex parte Jones, 530 So. 2d 877 (Ala. 1988) (holding that an escape from a "Supervised Intensive Restitution" program, a program similar to a work-release program, was properly punishable as one of the classifications of escape under the escape statutes); and State v. Wright, 976 So. 2d 1053, 1056 (Ala. Crim. App. 2007) (holding that individuals escaping from community-corrections programs may be charged with one of the classifications of escape under the escape statutes).

Such an overlap would pose no concern if the competing statutory provisions were complementary, but the problem at the heart of this case is that the statutes at issue provide differing punishments for the same conduct; the relevant county work-release statutes purport to punish escape from a work-release program as a misdemeanor while the escape

statutes deem the exact same conduct to be felonious. This direct conflict regarding the proper punishment for the same crime, coupled with the language and the legislative history of the relevant statutory provisions, suggests an intent on the part of the legislature to repeal the relevant provisions of the county work-release statutes to the extent that they provide a punishment separate and distinct from the escape statutes.

> "'"Repeal by implication is not favored. It is only when two laws are so repugnant to or in conflict with each other that it must be presumed that the Legislature intended that the latter should repeal the former. ..."
>
> "'Implied repeal is essentially a question of determining the legislative intent as expressed in the statutes. Ex parte Jones, 212 Ala. 259, 260, 102 So. 234 [(1924)]. When the provisions of two statutes are directly repugnant and cannot be reconciled, it must be presumed that the legislature intended an implied repeal, and the later statute prevails as the last expression of the legislative will. Union Central Life Ins. Co. v. State, 226 Ala. 420, 423, 147 So. 187 [(1933)]; Fidelity & Deposit Co. of Maryland v. Farmers' Hardware Co., 223 Ala. 477, 479, 136 So. 824 [(1931)].'"

Fletcher v. Tuscaloosa Fed. Sav. & Loan Ass'n, 294 Ala. 173, 177, 314 So. 2d 51, 55 (1975) (quoting State v. Bay Towing & Dredging Co., 265 Ala. 282, 289, 90 So. 2d 743, 749 (1956), quoting in turn City of Birmingham v. Southern Express Co., 164 Ala. 529, 538, 51 So. 159, 162 (1909)). Furthermore:

> "'"Where an amendment is made that changes the old law in its substantial provisions, it must, by a necessary implication, repeal the old law so far as they are in conflict. And where a new law, whether it be in the form of an amendment or otherwise, covers the whole subject-matter of the former, and is inconsistent with it, and evidently intended to supersede and take the place of it, it repeals the old law by implication."'"

Fletcher, 294 Ala. 176-77, 314 So. 2d at 54 (quoting Allgood v. Sloss-Sheffield Steel & Iron Co., 196 Ala. 500, 501, 71 So. 724, 724 (1916)).

This is not the first time the question whether § 14-8-42 has been impliedly repealed has been considered. In one of the first appellate decisions addressing the escape statutes, the Court of Criminal Appeals in Grimes v. State, 402 So. 2d 1094 (Ala. Crim. App. 1981), concluded -- based on an unduly narrow construction of the escape statutes -- that there was no conflict between the escape statutes and the county work-release statutes. In Grimes an inmate participating in a county work-release program failed to return to the jail from his work-release job and was thereafter convicted of first-degree escape under § 13A-10-31. The Grimes court reversed the conviction, holding that the escape statutes were inapplicable to an inmate's failure to return from a county work-release program established under the county work-release statutes because, it concluded, an inmate on work release was not actually "'in'

custody while at work." 402 So. 2d at 1096 ("Appellant was not 'in' custody while at work, but was out of custody with order to report back into custody at a specific time."). Building on that holding, the court in Grimes further concluded that the escape statutes posed no conflict with § 14-8-42. The court reasoned:

> "The [escape statutes] do not specifically cover the failure to return to custody, whereas the [county work-release statutes were] enacted by the legislature for a specific purpose and cover[] the conduct in question. The [county work-release statutes] and the [escape statutes] are not in conflict. The [escape statutes] do not repeal specifically nor by implication the penal provisions of the [the county work-release statutes].
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> "....
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> "Here, the legislature has provided a penalty for the exact conduct in question by way of ... § 14-8-42. If that section was deemed to have been repealed by implication by the [escape statutes], then the instant conduct would not fall within the clear meaning of those general escape provisions in § 13A-10-30 et seq. It would take a strained judicial construction of the wording of the [escape statutes] to bring the instant appellant's conduct within their terms."

402 So. 2d at 1096-97.

The holding in Grimes that the "penal" provisions of the county work-release statutes punished conduct distinct from the escape statutes, however, was underpinned by that court's narrow construction of the concept of "custody," i.e., that an inmate participating in a work-release

program is not "in custody" while at work. That interpretation of "custody" was reconsidered and rejected by the Court of Criminal Appeals three years later in Alexander v. State, 475 So. 2d 625 (Ala. Crim. App. 1984), rev'd on other grounds, Ex parte Alexander, 475 So. 2d 628 (Ala. 1985).

In Alexander, an inmate in the state penal system participating in a state work-release program failed to return from his place of employment and was convicted of first-degree escape pursuant to § 13A-10-31. The inmate in Alexander challenged his conviction, citing Grimes. The Alexander court overruled Grimes and held that an inmate on work release remains in "custody" as that term is defined by § 13A-10-30(b)(1). The Alexander court reasoned:

> "'One who has been taken into the custody of the law by arrest or surrender remains in legal custody until he has been delivered by due course of the law or departs unlawfully. And unless there is some limitation due to a restrictive statute he commits an escape if he willfully departs without having been delivered by due course of the law even if he was not kept behind locked doors or in the immediate presence of a guard.' R. Perkins and R. Boyce, Criminal Law 562 (3rd ed. 1982).
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> "The construction given 'custody' in Grimes is too restrictive. To the extent Grimes ... conflict[s] with our present opinion, [it is] overruled."

475 So. 2d at 627. Accordingly, the court in Alexander held that the escape statutes cover the failure of a state inmate to return from his or her place of employment while on work release. 475 So. 2d at 627-28.[6]

Although the holding in Alexander necessarily undermined the analysis in Grimes regarding the implied repeal of the "penal" provisions of the county work-release statutes, the Alexander court did not directly address that issue. To the contrary, the Alexander court distinguished between inmates in state work-release programs and inmates in county work-release programs, noting in dicta that "[a] county inmate or a state inmate in county custody who fails to return from work release is guilty of a misdemeanor under Alabama Code 1975, § 14-8-42." 475 So. 2d at 627. Citing Alexander, the Court of Criminal Appeals in Webb stated that "a county inmate or a state inmate in county custody who fails to return from work release is guilty only of a misdemeanor under § 14-8-

[6]This Court reversed Alexander on the basis that the Court of Criminal Appeals' interpretation of the escape statutes could be applied only prospectively -- i.e., it could not be applied retroactively to the circumstances of the inmate's case -- but it did not otherwise address the merits of the issues before the Alexander court. Ex parte Alexander, 475 So. 2d 628, 631 (Ala. 1985). Ultimately, this Court, in Ex parte Jones, 530 So. 2d 877, 878-79 (Ala. 1988), approved the Alexander court's construction of "custody."

42." 539 So. 2d at 345. Webb has, thereafter, been cited by the Court of Criminal Appeals for the proposition that a county inmate or a state inmate in county custody who escapes from work release is guilty only of a misdemeanor, and it is upon this line of cases that Jones now relies. See Conner v. State, 840 So. 2d 950, 951-52 (Ala. Crim. App. 2002), Terrell v. State, 621 So. 2d 402 (Ala. Crim. App. 1993), Cork v. State, 603 So. 2d 1127, 1128 (Ala. Crim. App. 1992), Moncrief v. State, 551 So. 2d 1175, 1178-79 (Ala. Crim. App. 1989), and Allen v. State, 481 So. 2d 418, 419 (Ala. Crim. App. 1985). Importantly, however, this Court has never addressed, and the Court of Criminal Appeals has never revisited, the question whether the relevant provisions concerning escape in the county work-release statutes survived the enactment of the escape statutes. We conclude they did not.

Sections 13A-10-31, 13A-10-32, and 13A-10-33, respectively, define the offenses of first-degree, second-degree, and third-degree escape and provide the punishments for those offenses. An escape from custody and an escape from a penal institution as described in § 14-8-42 fall within the conduct punishable under §§ 13A-10-31, 13A-10-32, or 13A-10-33. See Ex parte Jones, 530 So. 2d at 879. The purpose of the Alabama

Criminal Code, when it was enacted, was "[t]o provide an entirely new criminal code for the State of Alabama; defining offenses, fixing punishment; repealing numerous specific code sections and statutes that conflict herewith as well as all other laws that conflict with this act," Ala. Acts 1977, Act No. 607 (Title), and the act adopting the Alabama Criminal Code provided that "[a]ll laws or parts of laws which conflict with this act are hereby repealed." Id. at § 9902. Indeed, the Commentary to §§ 13A-10-31 through 13A-10-33 makes clear that those sections were intended to supplant and supersede Alabama's former "helter-skelter" scheme for punishing escapes. Moreover, the escape statutes were intended to cover all escapes; no exception was granted to escapees from county work-release programs. Furthermore, because the Alabama Criminal Code defines the various escape offenses, the punishment for those offenses is likewise governed by the Alabama Criminal Code. See § 13A-1-7(a), Ala. Code 1975 ("The provisions of [the Alabama Criminal Code] shall govern the construction of and punishment for any offense defined in [the Alabama Criminal Code] ...."). Accordingly, to the extent that §§ 14-8-42 and 14-8-43 provide a separate and distinct punishment for an escape from a county work-release

program, those sections are in irreconcilable conflict with, and thus were repealed by, the later-adopted escape statutes in the Alabama Criminal Code.[7] See Benson v. City of Birmingham, 659 So. 2d 82, 86 (Ala. 1995) (stating that implied repeal will be found "when the two statutes are so repugnant to, or in such conflict with, one another that it is obvious that

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[7]The State posits that § 14-8-42 may be read harmoniously with the escape statutes. The language of § 14-8-42 suggests that the severity of the punishment for an escape from a county work-release program was intended to differ depending on an inmate's classification as a "state inmate" or "county inmate." Section 14-8-42 provides that a state inmate who has escaped from a county work-release program is deemed to have escaped from a "state penal institution" while a county inmate who has escaped from a county work-release program is deemed to have escaped from "the custody of the sheriff" and that such escapes "shall be punishable accordingly." At the time the county work-release statutes were adopted, escape from a state penitentiary was punishable for "not less than one year," Ala. Code 1975, former § 13-5-65, and escape from lawful custody was punishable by imprisonment in the county jail or hard labor for "not more than six months." Ala. Code 1975, former § 13-5-68. The Alabama Criminal Code as originally enacted would have generally maintained this approach, punishing escape from a penal facility as a Class C felony, Ala. Acts 1977, Act No. 607, § 4607, and "escape from custody" as a Class A misdemeanor, Ala. Acts 1977, Act. No. 607, § 4608. See note 4, supra. Thus, § 14-8-42 could arguably be interpreted as referencing the generally applicable escape statutes. This attempt to harmonize § 14-8-42 with the escape statutes makes sense until that section is read in conjunction with § 14-8-43, which provides that "[a]nyone violating any of the provisions of [the county work-release statutes] shall be guilty of a misdemeanor." (Emphasis added.) Any internal ambiguity in the county work-release statutes was cured when the legislature amended the escape statutes and made all escapes punishable as felonies.

the legislature intended to repeal the first statute"). Furthermore, the escape statutes form a statutory scheme that covers the whole subject of escape and was "evidently intended to supersede and take the place" of the relevant provisions regarding escape of the county work-release statutes. Fletcher, 294 Ala. at 177, 314 So. 2d at 54 (citations and quotation marks omitted). Therefore, to the extent §§ 14-8-42 and 14-8-43 separately define and punish the offense of escape from a county work-release program, those sections were impliedly repealed upon the effective date of the escape statutes.[8] See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 55 at 328-29 (Thomson/West 2012) (discussing, as a case providing a particularly apt illustration of an implied repeal, Washington v. State, 117 Nev. 735, 30 P.3d 1134 (2001), in which the court determined that an act that defined certain conduct as a misdemeanor had impliedly repealed a previous act that punished the same conduct as a felony); and Miller v. State, 349 So. 2d 129, 131 (Ala. Crim. App. 1977) (holding that a provision of the state work-release statutes, providing that escape from a state work-release

[8]This opinion should not be read as recognizing a repeal of § 14-8-43 to the extent that that section has a field of operation with respect to other "violations" of the county work-release statutes.

program was a misdemeanor, had impliedly repealed former § 13-5-65 to the extent that that statute had punished the same conduct as a felony).

Conclusion

The willful escape from a work-release program is punishable under the escape statutes in the Alabama Criminal Code. In this case, Jones was convicted of second-degree escape pursuant to § 13A-10-32. Accordingly, that section, not the provisions of the county work-release statutes, defines the punishment for her offense. The judgment of the Court of Criminal Appeals is affirmed.

AFFIRMED.

Bolin, Shaw, Wise, Bryan, and Mendheim, JJ., concur.

Sellers, J., concurs in the result.

Mitchell, J., concurs in the result, with opinion, which Parker, C.J., joins.

MITCHELL, Justice (concurring in the result).

I agree with the majority opinion that the judgment of the Court of Criminal Appeals should be affirmed. The majority opinion's rationale for doing so is premised on a finding that, to the extent that §§ 14-8-42 and -43, Ala. Code 1975, separately define and punish the offense of escape from a county work-release program, those sections were implicitly repealed as of January 1, 1980, when "the escape statutes," §§ 13A-10-30 through -33, Ala. Code 1975, became effective after the Alabama Criminal Code was adopted. But §§ 14-8-42 and -43 and the escape statutes can exist in harmony with each other, and I believe it is incumbent on our Court to read them together in that way. For that reason, I am able to concur in the result only.

Our Court has explained that "[r]epeal by implication is not favored." City of Birmingham v. Southern Express Co., 164 Ala. 529, 538, 51 So. 159, 162 (1909). See also Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 55 at 327 (Thomson/West 2012) ("Repeals by implication are disfavored -- 'very much disfavored.'"). Accordingly, courts should conclude that a statute has implicitly repealed an earlier statute only when the two statutes "are

so repugnant to or in conflict with each other that it must be presumed that the Legislature intended that the latter should repeal the former." City of Birmingham, 164 Ala. at 538, 51 So. at 162. Thus, "if there be a reasonable field of operation, by a just construction, for both; ... then they will both be given effect. This is preferable to repeal by implication." Id. In my view, §§ 14-8-42 and -43 and the escape statutes can coexist, that is, they can all be given "a reasonable field of operation." Id. Therefore, I believe it is wrong to conclude that §§ 14-8-42 and -43 were implicitly repealed in any respect.

Begin with the text of § 14-8-42:

> "The willful failure of an inmate to remain within the extended limits of his confinement or to return to the place of confinement within the time prescribed shall be deemed an escape from a state penal institution in the case of a state inmate and an escape from the custody of the sheriff in the case of a county inmate and shall be punishable accordingly."

Lest there be any doubt, the first part of this statute confirms that an inmate participating in a county-operated work-release program who willfully fails "to remain within the extended limits of his confinement or to return to the place of confinement within the time prescribed" has committed a crime just like any other inmate who flees his or her confinement, namely, "an escape from a state penal institution in the case

of a state inmate" or "an escape from the custody of the sheriff in the case of a county inmate." (Emphasis added.) The concluding language of § 14-8-42 then provides that these crimes -- that is, "escape from a state penal institution" or "escape from the custody of the sheriff" -- "shall be punishable accordingly." But according to what?

The petitioner Whitney Owens Jones and the State have different answers. Jones argues that an inmate participating in a county work-release program who has committed an escape should be punished according to § 14-8-43, which provides that "[a]nyone violating any of the provisions of this article [i.e., Title 14, Chapter 8, Article 2] shall be guilty of a misdemeanor." But the State argues that such an inmate should instead be punished according to the statute that specifically criminalizes the inmate's behavior. Thus, an inmate whose actions are deemed to constitute "an escape from a state penal institution" should, per the State, be punished according to § 13A-10-32(a), Ala. Code 1975, which provides that "[a] person commits the crime of escape in the second degree if he escapes or attempts to escape from a penal facility." (Emphasis added.) And an inmate whose actions are deemed to constitute "an escape from the custody of the sheriff" should, per the

State, be punished according to § 13A-10-33(a), Ala. Code 1975, which provides that "[a] person commits the offense of escape in the third degree if he escapes or attempts to escape from custody." See also § 13A-10-30(b)(1), Ala. Code 1975 (explaining that the term "custody" as used in the escape statutes means "[a] restraint or detention by a public servant [such as a sheriff] pursuant to a lawful arrest, conviction or order of court"). Both second-degree escape under § 13A-10-32 and third-degree escape under § 13A-10-33 are Class C felonies and command a harsher punishment than mere misdemeanors.

The State's argument is convincing. Notably, the relevant language of § 14-8-42 ("an escape from a state penal institution" and "an escape from the custody of the sheriff") parallels the language of § 13A-10-32(a) ("escape from a penal facility") and § 13A-10-33(a) ("escape from custody"), which should leave no doubt that these statutes all address the same specific subject matter -- criminal escape -- and should therefore be construed together "to form one harmonious plan and give uniformity to the law." League of Women Voters v. Renfro, 292 Ala. 128, 131, 290 So. 2d 167, 169 (1974). See also Scalia & Garner, Reading Law: The Interpretation of Legal Texts § 39 at 252 ("Statutes in pari materia

[dealing with the same subject] are to be interpreted together, as though they were one law."). And it makes intuitive sense that a state inmate participating in a county work-release program deemed to have escaped "from a state penal institution," § 14-8-42, would be given the same punishment as any other inmate who escaped "from a penal facility." § 13A-10-32(a). Likewise, a county inmate participating in a county work-release program deemed to have escaped "from the custody of the sheriff," § 14-8-42, should be punished the same as any other inmate who has escaped "from custody." § 13A-10-33(a). In short, there is no reason why an escapee should be granted a break merely because he or she escaped from a county work-release program as opposed to escaping from the jailer or the jail itself. See Sommerville v. State, 555 So. 2d 1165, 1167 (Ala. Crim. App. 1989) ("[The defendant's] escape from the work detail had no legal significance different from an escape from the jail itself.").

But what about § 14-8-43? This statute expressly provides that "[a]nyone violating any of the provisions of this article shall be guilty of a misdemeanor." The article to which § 14-8-43 refers admittedly includes § 14-8-42 -- hence Jones's argument that her escape was only a misdemeanor that should have been punished as such. But an inmate

does not violate § 14-8-42 when he or she willfully fails "to remain within the extended limits of his [or her] confinement or to return to the place of confinement within the time prescribed." Rather, that inmate has violated the applicable escape statute. Section 14-8-42 serves only to clarify that the inmate's escape -- though committed within the context of a county work-release program -- should indeed be "deemed an escape from a state penal institution in the case of a state inmate and an escape from the custody of the sheriff in the case of a county inmate." And, as explained above, that escape "shall be punishable accordingly."[9]

It is important to note that this understanding of the statutes leaves § 14-8-43 with a field of operation. Section § 14-8-43 is the second-to-last statute in an article containing various rules that employers must follow if they choose to participate in a county-operated work-release program. For example, § 14-8-35, Ala. Code 1975, prohibits: (1) inmates being paid less than "the prevailing wage for similar work in the area or community where the work is performed"; (2) the employment of inmates

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[9]This understanding comports with the State's actions in this case. The State did not indict Jones for violating § 14-8-42. Rather, it initially indicted her for violating § 13A-10-33 and later amended that indictment to charge her with violating § 13A-10-32.

if it would "result in the displacement of employed workers"; (3) the use of inmates "as strikebreakers"; and (4) the "[e]xploitation of eligible prisoners in any form." And § 14-8-36(b), Ala. Code 1975, requires inmates employed by the State or any county to "be paid the federally established minimum wage," while § 14-8-37, Ala. Code 1975, dictates how an inmate's earnings should be allocated. In accordance with the plain language of § 14-8-43, anyone violating these statutes "shall be guilty of a misdemeanor." Thus, § 14-8-43 maintains a field of operation, allowing it and § 14-8-42 to coexist with the escape statutes; it is thus incorrect to find that the latter implicitly repealed the former.

Applying this understanding of the statutes to Jones's case, it is clear why the Court of Criminal Appeals' judgment should be affirmed. Substantial evidence was presented at trial indicating that Jones had violated § 13A-10-32, the statute that she was accused of violating and that criminalizes "escapes or attempts to escape from a penal facility." The jury returned a guilty verdict based on that evidence, and, contrary to Jones's arguments on appeal, her conviction is entirely consistent with the terms of § 14-8-42 because her "willful failure … to return to the place of confinement within the time prescribed" is, by the terms of the statute,

"deemed an escape from a state penal institution" and "punishable accordingly." Under § 13A-10-32, convictions for escape from a penal facility are Class C felonies -- not misdemeanors -- and the sentence imposed by the trial court was appropriate. Accordingly, while I agree with the majority opinion that the judgment of the Court of Criminal Appeals should be affirmed, I believe we are bound to adopt a different rationale. I therefore respectfully concur in the result.

Parker, C.J., concurs.