IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

WILLIE OWENS,

Petitioner,

v. Case No. 5D19-3366

MARK FLOWERS, DIRECTOR OF VOLUSIA
COUNTY DEPARTMENT OF CORRECTIONS
AND STATE OF FLORIDA,

Respondents.
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Opinion filed November 22, 2019

Petition for Writ of Habeas Corpus,
A Case of Original Jurisdiction.

Michael H. Lambert and Bryan G. Lambert, of Lambert Law, Daytona Beach, for Petitioner.

Ashley Moody, Attorney General, Tallahassee, and Pamela J. Koller, Assistant Attorney General, Daytona Beach, for Appellee.

COHEN, J.

This Court previously granted Willie Owens's petition for writ of habeas corpus by order. We write to explain the reason for our decision.

In 1992, Owens entered a guilty plea to second-degree murder with a firearm, a life felony (Count 1), and shooting into an occupied vehicle, a second-degree felony (Count 2). The trial court sentenced Owens to forty years in the Department of

Corrections ("DOC") followed by fifteen years of supervised probation on Count 1 and fifteen years in the DOC on Count 2.

In 2014, Owens was released from prison and began the probationary term of his sentence. He was subsequently arrested and charged with drug-related offenses as well as violating his probation by committing the new law violations, failing to pay restitution, and possessing a controlled substance.

Owens filed a motion to correct illegal sentence, seeking to have the violation of probation charge dismissed. He argued that the probationary portion of his sentence was illegal because at the time he was sentenced, the statutory maximum which could have been imposed was either life or forty years in prison. Owens contended that because the trial court elected to impose a term of years, the statutory maximum was forty years, which he served.[1]

Despite the pending motion to correct illegal sentence, the trial court held a violation of probation hearing. At that hearing, the State conceded that Owens's probationary term was illegal because the combination of his prison sentence and probationary term exceeded forty years. The State agreed that Owens should be resentenced to the forty years he already served but no probationary period, such that the violation of probation charge would be dismissed, and Owens's remaining financial obligations would be converted to a lien. The trial court refused to accept the State's concession, indicating that it would review Owens's motion to correct illegal sentence at another time. At the time this Court issued its order, the trial court had not entered a

[1] Owens's service of the sentence was clearly impacted by credit for time served as well as statutory gain time.

ruling on Owens's motion, and Owens remained detained on the violation of probation charge.

Owens committed the second-degree murder with a firearm in 1991. At that time, section 775.082(3)(a), Florida Statutes (1991), provided that a life felony committed on or after October 1, 1983, was punishable "by a term of imprisonment for life or by a term of imprisonment not exceeding forty years." (emphasis added); Dyer v. State, 629 So. 2d 285, 286 (Fla. 5th DCA 1993). Accordingly, when the trial court imposed the forty-year sentence followed by fifteen years of probation, the probationary portion of the sentence was illegal *ab initio* because it exceeded the statutory maximum. Cf. Dyer, 629 So. 2d at 286; Taylor v. State, 573 So. 2d 173, 174 (Fla. 5th DCA 1991) (stating because trial court elected to sentence defendant to forty years for life felony, trial court could not impose sentence exceeding forty years); Sterling v. State, 584 So. 2d 626, 627 (Fla. 2d DCA 1991) (explaining sentence for attempted murder of forty-five years in prison followed by thirty years of probation was illegal because it exceeded statutory maximum).

Accordingly, Owens's probationary term was illegal, even if Owens agreed to it as part of his plea. Cf. Martinez v. State, 211 So. 3d 989, 991 (Fla. 2017) ("[A] sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.'" (quoting Plott v. State, 148 So. 3d 90, 94 (Fla. 2014))); Dyer, 629 So. 2d at 286 ("The fact that his sentence was the result of a valid plea agreement does not make the

sentence imposed a legal sentence."). Consequently, Owens could not have been lawfully detained for the alleged violation of probation.[2]

As a result of our order granting Owens's petition for writ of habeas corpus, Owens was released from jail for the violation of probation charge only.

WALLIS and LAMBERT, JJ., concur.

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[2] Unlike cases in which a defendant can be resentenced or the State is permitted to withdraw the plea because the defendant can still serve a portion of the sentence, here, Owens already completed his sentence by serving the entirety of his prison term.