

Rel: August 18, 2023

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Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-2022-1121

State of Alabama

v.

Prentice D. Tanniehill

Appeal from Jefferson Circuit Court
(CC-12-3126.60)

MINOR, Judge.

In this appeal, we consider whether the Jefferson Circuit Court had jurisdiction to grant relief on Prentice D. Tanniehill's postconviction claim alleging that the sentence on his 2013 guilty-plea conviction was illegal. Because Tanniehill's sentence ended before he challenged it, we

hold that the circuit court did not have jurisdiction to vacate the sentence on which that sentence was based. We thus reverse the circuit court's judgment.

FACTS AND PROCEDURAL HISTORY

Tanniehill pleaded guilty in September 2013, under a negotiated plea agreement, to trafficking cocaine, see § 13A-12-231(2)(1), Ala. Code 1975.¹ The circuit court sentenced Tanniehill to the agreed-upon 15 years' imprisonment, which was split and Tanniehill was ordered to serve 2 years in prison followed by 3 years of probation. After serving the confinement portion of the split sentence, Tanniehill completed his probation in November 2018.

More than three years later, Tanniehill petitioned for postconviction relief under Rule 32, Ala. R. Crim. P.² Tanniehill alleged that his split sentence was illegal because the length of the confinement portion of the split—two years—was less than the mandatory minimum of three years under § 13A-12-231(2)(a), Ala. Code 1975. Based on that,

¹The circuit court certified the parties' agreed-upon facts as a part of the statement of the case. (C. 12.) See Rule 10(e), Ala. R. App. P.

²Tanniehill paid the filing fee. (C. 55.)

Tanniehill asserted that he had a right to have his guilty-plea conviction and sentence set aside. After arguments and briefs from the parties, the circuit court granted the petition and entered an order purporting to vacate Tanniehill's conviction and sentence. The State timely appealed. See Rule 32.10, Ala. R. Crim. P.

STANDARD OF REVIEW

""[W]hen the facts are undisputed and an appellate court is presented with pure questions of law, the court's review in a Rule 32 proceeding is de novo. Ex parte White, 792 So. 2d 1097, 1098 (Ala. 2001).'' Ex parte Clemons, 55 So. 3d 348, 350 (Ala. 2007).'' Lay v. State, 82 So. 3d 9, 11 (Ala. Crim. App. 2011).

DISCUSSION

The State offers several arguments in support of its assertion that the circuit court erred in granting Tanniehill's Rule 32 petition. We need not consider those arguments, however, because under Lanier v. State, 270 So. 3d 304, 310 (Ala. Crim. App. 2018), the circuit court had no jurisdiction to grant Tanniehill the specific relief of vacating his sentence. See, e.g., Dixon v. State, 920 So. 2d 1122, 1127 (Ala. Crim. App. 2005) ("[W]e find it necessary to address Dixon's claim regarding the

amendment of his sentence. This is a matter of subject matter jurisdiction, an issue we would have addressed ex mero motu, even if Dixon had not raised it on appeal. See Thompson v. Board of Pardons & Paroles, 806 So. 2d 374, 375 (Ala. 2001) ("[I]t is the duty of an appellate court to consider lack of subject matter jurisdiction ex mero motu." (quoting Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983))).

In Lanier, the petitioner had pleaded guilty in 1996 to first-degree robbery and was sentenced to 12 years' imprisonment; that sentence was split, and he was ordered to serve 2 years followed by 3 years of probation. 270 So. 3d at 307. In 2016, Lanier petitioned under Rule 32, Ala. R. Crim. P., alleging that his sentence was illegal, and the circuit court resentenced Lanier to 25 years' imprisonment. Id. at 310. Lanier did not appeal his resentencing.

Lanier then filed a Rule 32 petition in which he challenged the 2016 resentencing because, he said, the circuit court lacked jurisdiction to resentence him. This Court held that, when the circuit court purported to resentence Lanier in 2016, Lanier's sentence had expired:

"Initially, we point out that, although the State concedes on appeal that Lanier's original sentence had expired before he was resentenced, the circuit court found otherwise. In its summary-dismissal order, the circuit court found that Lanier

had served the confinement portion of his original sentence but that his probation had never been revoked and he had never served the remaining 10 years of his 12-year sentence. Those factual findings are supported by the record. The record reflects that Lanier was sentenced to 12 years' imprisonment, that the sentence was split, and that Lanier was ordered to serve 2 years in confinement followed by 3 years on probation. Lanier was also given 468 days of jail credit. The confinement portion of Lanier's sentence began in January 1996, and, after completing that portion of his sentence, he was released to serve the probationary portion of his sentence. On October 31, 1996, Lanier's probation officer filed a delinquency report alleging that Lanier had violated the terms of his probation by committing a new offense, and the trial court ordered Lanier's arrest, but two weeks later, after a probation-revocation hearing, the trial court reinstated Lanier's probation, and the record reflects no further action with respect to Lanier's probationary term.²

"Although the circuit court was correct that Lanier's probation was never revoked and that he did not serve in confinement the entirety of his 12-year sentence, the court's conclusion, based on those facts, that Lanier's sentence had not expired was erroneous. In Woodward v. State, 3 So. 3d 941, 944 (Ala. Crim. App. 2008), this Court recognized that a probationary period ends when (1) the probationer satisfactorily fulfills all the conditions of probation and the probationary term ordered by the court expires; (2) the maximum period of probation allowed by law expires, even if the probationer has not fulfilled the conditions of probation; or (3) the court formally discharges the probationer from probation. In this case, there is no indication that Lanier fulfilled the conditions of his probation or that the court formally discharged him from probation. However, the record is clear that the maximum period of probation allowed by law expired before Lanier was resentenced.

"When a defendant is sentenced pursuant to the Split Sentence Act, as Lanier was, the maximum period of probation allowed by law is that portion of the sentence not ordered to be served in confinement. See Burge v. State, 623 So. 2d 450 (Ala. Crim. App. 1993), and Hatcher v. State, 547 So. 2d 905 (Ala. Crim. App. 1989). In this case, the maximum period of probation allowed by law was 10 years, and once those 10 years lapsed the probationary period ended and Lanier's sentence expired. Because his probation was never revoked, although it was tolled for approximately 2 weeks (see note 2, supra), the 10-year maximum probationary term ended, and Lanier's sentence expired, in 2006, a decade before Lanier was resentenced.

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"²¹"As a practical matter, the running of the period of probation must be considered tolled when a warrant of arrest for violation of probation is issued by the court." Mumpfield v. State, 872 So. 2d 205, 207 (Ala. Crim. App. 2003) (quoting Peoples v. State, 439 So. 2d 774, 775 (Ala. Crim. App. 1983))."

Lanier, 270 So. 3d at 307.

Framing the issue as "whether a trial court retains jurisdiction to correct an illegal sentence after that sentence has expired," 270 So. 3d at 308, this Court held that a trial court does not have such jurisdiction:

"[T]here must be a temporal limitation on a court's ability to resentence a defendant ... since criminal courts do not have perpetual jurisdiction over all persons who were once sentenced for criminal acts.' People v. Williams, 14 N.Y.3d 198, 217, 899 N.Y.S.2d 76, 88, 925 N.E.2d 878, 890 (2010). That limitation logically falls at the expiration of a sentence. Although an illegal sentence may be corrected after the defendant has begun serving the sentence without double-

jeopardy implications, resentencing a defendant after the expiration of a sentence, even to correct an illegal sentence, results in multiple punishments for the same offense.

"The Fifth Amendment's Double Jeopardy Clause protects against a second prosecution for the same offense after an acquittal, a second prosecution for the same offense after conviction, and against multiple punishments for the same offense.' Woods v. State, 709 So. 2d 1340, 1342 (Ala. Crim. App. 1997). 'The clause applies to "multiple punishment" because, if it did not apply to punishment, then the prohibition against "multiple trials" would be meaningless; a court could achieve the same result as a second trial by simply resentencing a defendant after he has served all or part of an initial sentence.' United States v. Fogel, 829 F.2d 77, 88 (D.C. Cir. 1987). '[T]he primary purpose of the Double Jeopardy Clause [i]s to protect the integrity of a final judgment,' United States v. Scott, 437 U.S. 82, 92, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978), and jeopardy attaches to a sentence when the defendant acquires 'an expectation of finality in the original sentence.' United States v. DiFrancesco, 449 U.S. 117, 139, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980).

"Several jurisdictions that have addressed the issue presented here have held that there is a jurisdictional limitation, founded on double-jeopardy principles, on a trial court's correcting an illegal sentence after the sentence has expired. In Commonwealth v. Selavka, 469 Mass. 502, 509, 14 N.E.3d 933, 941 (2014), the Supreme Judicial Court of Massachusetts recognized that 'even an illegal sentence will, with the passage of time, acquire a finality that bars further punitive changes detrimental to the defendant' and the Court held that 'the delayed correction of the defendant's initial sentence, in which he by then had a legitimate expectation of finality, violated double jeopardy and cannot stand.' The New York Court of Appeals has similarly recognized:

"Even where a defendant's sentence is illegal, there is a legitimate expectation of finality once the initial sentence has been served and the direct appeal has been completed (or the time to appeal has expired) [so that] the sentences are beyond the court's authority and, ... although illegal under the Penal Law, ... the Double Jeopardy Clause prevents a court from modifying the sentence.'

"People v. Williams, supra, 14 N.Y.3d at 217-20, 899 N.Y.S.2d at 87-89, 925 N.E.2d at 890-91.

"As Florida's Court of Appeal for the Second District succinctly stated: 'Once a sentence has already been served, even if it is an illegal sentence or an invalid sentence, the trial court loses jurisdiction and violates the Double Jeopardy Clause by reasserting jurisdiction and resentencing the defendant to an increased sentence.' Maybin v. State, 884 So. 2d 1174, 1175 (Fla. Dist. Ct. App. 2004). See also State v. Holdcroft, 137 Ohio. St. 3d 526, 527-33, 1 N.E.3d 382, 384-89 (2013) (holding that 'when the entirety of a prison sanction has been served, the defendant's expectation in finality in his sentence becomes paramount, and his sentence for that crime may no longer be modified,' even 'when one of the sanctions originally imposed by the trial court is void'); March v. State, 109 N.M. 110, 111, 782 P.2d 82, 83 (1989) ('[T]he court has authority to correct an irregular sentence at any time prior to when defendant has served his full sentence.');

Commonwealth v. Borrin, 12 A.3d 466, 472 (Pa. Sup. Ct. 2011) ('The double jeopardy clauses of the United States and Pennsylvania Constitutions prohibit a trial court from exercising its authority to correct a clerical error to increase a defendant's sentence when the defendant fully served the maximum term of his sentence, as stated in the sentencing order, and the direct appeal had been completed or the time for appeal has expired.')

aff'd, 622 Pa. 422, 80 A.3d 1219 (2013); and State v. Houston, 795 N.W.2d 99 (Iowa Ct. App. 2010) (table) (unpublished disposition) ('In accord with double

jeopardy principles, we conclude that a legitimate expectation of finality arises upon a defendant's completion of the original sentence. It follows that a proper limit on a court's ability to resentence a defendant to correct an illegal sentence should be prior to completion of the original sentence. Once the original sentence is fully served, the attachment of jeopardy ... preclude[s] the court from resentencing.'). Cf. State v. Brown, 479 S.W.3d 200, 211 (Tenn. 2015) (interpreting a rule of procedure to prohibit correction of an illegal sentence after the sentence has expired in order to avoid unconstitutional results); and State v. Laird, 25 N.J. 298, 307, 135 A.2d 859, 864 (1957) (holding that a procedural rule permitting a trial court to correct an illegal sentence "'at any time"' did not 'authorize an enlargement of the punishment after the sentence imposed had been satisfied and the defendant discharged').

"We agree with the above jurisdictions, and we hold that a trial court loses jurisdiction to correct an illegal sentence once that sentence expires and the direct appeal has been completed or the time to appeal has lapsed and that a trial court's correcting an illegal sentence after the expiration of that sentence violates principles of double jeopardy. Because Lanier's sentence for his 1996 robbery conviction expired in 2006, the circuit court lacked jurisdiction in 2016 to resentence him and doing so resulted in multiple punishments for the same offense in violation of double-jeopardy principles."

270 So. 3d at 308-10 (emphasis added).

It is undisputed that Tanniehill completed his probation in November 2018. Under Woodward v. State, 3 So. 3d 941 (Ala. Crim. App. 2008), Tanniehill completed his sentence more than three years before he filed the Rule 32 challenging the legality of his sentence. Thus, the circuit

court, like the circuit court in Lanier, lacked jurisdiction to change Tanniehill's sentence because that sentence had expired. Lanier, 270 So. 3d at 310 ("[T]he lack of subject-matter jurisdiction is a fundamental error depriving the court of the authority to render a valid decision,' Ex parte V.S., 918 So. 2d 908, 912-13 (Ala. 2005), and 'a defendant cannot consent to waive a jurisdictional defect.' Moore v. City of Leeds, 1 So.3d 145, 152 (Ala. Crim. App. 2008)"). What's more, as this Court later explained in Lanier v. State, 296 So. 3d 341 (Ala. Crim. App. 2019), even if Lanier's sentence were illegal—a point the State had conceded and this Court simply assumed for purposes of decision—his 1996 conviction remained valid. Id. at 343 ("Contrary to Lanier's apparent belief, the legality or illegality of a sentence has no bearing whatsoever on the validity of the underlying conviction.").

Tanniehill cites Williams v. State, 203 So. 3d 888 (Ala. Crim. App. 2015), in support of the circuit court's judgment. In Williams, the petitioner, Cornelius Williams successfully challenged his sentence because the 2-year confinement portion of his split 20-year sentence did not meet the 3-year minimum required under § 15-18-8(a), Ala. Code 1975. 203 So. 3d at 897. This Court in Williams said nothing, however,

about whether Williams's sentence had expired. But here the record shows that Tanniehill's sentence has expired. As explained above, under Lanier, 270 So. 3d 304, a circuit court does not have subject-matter jurisdiction to amend a sentence after that sentence has expired. Thus, Williams gives Tanniehill no right to relief.

CONCLUSION

Because Tanniehill's sentence had expired, Tanniehill was due no relief on his petition, which hinged solely on his claim alleging that his sentence was illegal. Lanier, 270 So. 3d at 310. Thus, there is "no material issue of fact or law ... which would entitle [Tanniehill] to relief," and the circuit court should have dismissed the petition under Rule 32.7(d), Ala. R. Crim. P.

The judgment of the circuit court is reversed, and the cause is remanded to the circuit court for that court to set aside its judgment granting the petition and to enter a judgment dismissing Tanniehill's petition. No return to remand need be filed.

REVERSED AND REMANDED.

Windom, P.J., and McCool and Cole, JJ., concur. Kellum, J., concurs in the result, with opinion.

KELLUM, Judge, concurring in the result.

I agree that a circuit court lacks jurisdiction to amend a sentence, even an illegal sentence, after that sentence has expired. After all, I authored the opinion in Lanier v. State, 270 So. 3d 304 (Ala. Crim. App. 2018). However, I disagree with the Court's holding today that a circuit court lacks jurisdiction to grant a Rule 32, Ala. R. Crim. P., petition for postconviction relief that challenges an expired sentence. The Court's reliance on Lanier to reach that conclusion is misplaced because this Court did not address that issue in Lanier. The only issue in Lanier was whether a circuit court has jurisdiction to amend a sentence after the sentence has expired; we held that it does not. Amending a sentence, however, is quite different from ruling on a Rule 32 petition. See, e.g., Ex parte Walker, 152 So. 3d 1247, 1251 (Ala. 2014) ("The determination to grant or to deny postconviction relief and the propriety of the new sentence, however, are two distinct judicial matters. The petitioner's new sentence is the result of a complete and independent proceeding."). In my view, the fact that a circuit court would, at "a complete and independent proceeding," lack jurisdiction to amend an expired sentence does not retroactively deprive the circuit court of jurisdiction to grant

Rule 32 relief from a conviction and sentence, as the circuit court did here. Rather, a challenge to a sentence that has already expired simply fails to state a claim upon which Rule 32 relief can be granted and must be summarily dismissed pursuant to Rule 32.7(d), Ala. R. Crim. P.

Moreover, the Court's action here, reversing the circuit court's judgment, is inconsistent with its holding that the circuit court lacked jurisdiction to issue that judgment. If the circuit court lacked jurisdiction to issue the judgment, then its judgment is void, and it is well settled that "[a] void judgment will not support an appeal." Madden v. State, 885 So. 2d 841, 844 (Ala. Crim. App. 2004). That being said, for the reasons explained below, I agree that the circuit court's judgment is due to be reversed.

Prentice D. Tanniehill alleged in his Rule 32 petition that the sentence imposed -- 15 years' imprisonment, which sentence was split, and he was ordered to serve 2 years in confinement followed by 3 years on probation -- for his 2013 conviction for trafficking in cocaine was illegal and that, because the sentence was the result of a plea agreement with the State, he was entitled to have both his conviction and sentence set aside. The circuit court agreed, granted Tanniehill's petition, and set

aside his conviction and sentence. For purposes of this appeal, the parties stipulated that Tanniehill completed the probationary portion of his split sentence -- and thus, that his sentence had expired -- in November 2018, more than three years before he filed his Rule 32 petition in March 2022.

In his petition, Tanniehill relied on Williams v. State, 203 So. 3d 888 (Ala. Crim. App. 2015), in support of his argument that he was entitled to have both his conviction and sentence set aside. In Williams, this Court held that when, on request for relief under Rule 32, it is clear that the petitioner's sentence was illegal and the illegal sentence was imposed pursuant to a plea agreement with the State, the petitioner is entitled to have both his conviction and sentence set aside. Our holding in Williams was based on the principle that, when a circuit court rejects the terms of a plea agreement by imposing a sentence not contemplated by the agreement, a defendant is entitled to an opportunity to withdraw his plea. See Rule 14.3(c)(2)(iv), Ala. R. Crim. P.

However, under this principle, a defendant is not entitled to have his guilty plea automatically set aside; rather, he is entitled only to an opportunity to withdraw his guilty plea if he chooses to do so. In other

words, when a circuit court rejects a plea agreement, a defendant may choose to withdraw his guilty plea or he may choose to let the plea stand. More importantly, under this principle, a defendant is entitled to an opportunity to withdraw his guilty plea only if the circuit court rejects the plea agreement by imposing a sentence not contemplated by the agreement. This Court in Williams did not recognize and apply these basic axioms; instead, it held that when a circuit court imposes an illegal sentence as part of a plea agreement with the State, a Rule 32 petitioner who challenges the legality of that sentence is automatically entitled to have both his conviction and sentence set aside if the sentence is illegal. The circuit court found similarly when granting Tanniehill relief, although it did not cite Williams in support of that finding.³

It appears to me that this Court's holding in Williams was an attempt to avoid wasting time and judicial resources. If a Rule 32

³Instead, the circuit court relied on Sartain v. State, 345 So. 3d 693 (Ala. Crim. App. 2021), in which this Court recognized that a circuit court has no jurisdiction to "act" on an illegal split sentence by revoking the probationary portion of the sentence. Sartain is inapposite, however, because, at the time Tanniehill filed his petition, the circuit court had taken no action on his sentence. Based on the parties' stipulation, Tanniehill served his sentence without incident and the sentence expired long before Tanniehill filed his Rule 32 petition.

petitioner makes it clear in his petition that, if he was resentenced, he would move to withdraw his guilty plea, it would appear to be a waste of time and resources to first require the circuit court to resentence the petitioner, thereby rejecting the plea agreement, before allowing the petitioner the opportunity to withdraw his plea. Setting aside both the conviction and sentence at the Rule 32 stage of the proceedings is simply more economical. Nonetheless, I believe Williams should be overruled in that regard⁴ and that this Court should hold that, when a Rule 32 petitioner establishes that his sentence was illegal, at most, the petitioner is entitled to have his sentence set aside and to be resentenced. Upon resentencing, of course, if the sentence is not in compliance with the plea agreement, the circuit court must afford the petitioner an opportunity to withdraw his plea if the petitioner so chooses. Only by following this procedure can this Court adhere to the plain language of Rule 14.3(c)(2)(iv) that, when a circuit court rejects the terms of a plea agreement, a defendant must be afforded an opportunity to withdraw his plea if he so chooses. In addition, following this procedure is consistent

⁴In its brief, the State urges this Court to overrule Williams, but not on this ground.

with the fact that "the legality or illegality of a sentence has no bearing whatsoever on the validity of the underlying conviction." Lanier v. State, 296 So. 3d 341, 343 (Ala. Crim. App. 2019).

In any event, I agree with the Court that Williams does not apply in this case. As already explained, the premise of Williams is that a defendant is entitled to an opportunity to withdraw his guilty plea if the circuit court rejects the plea agreement by imposing a sentence not contemplated by the agreement. However, in Williams, the petitioner's sentence had not yet expired;⁵ therefore, the circuit court still had jurisdiction to resentence him to a legal sentence, which would be a rejection of the plea agreement, at which point the petitioner, as he made clear in his petition, would move to withdraw his guilty plea and the circuit court would be required to grant that motion. In this case, although it is clear from his petition that Tanniehill would move to withdraw his plea if he were resentenced, because Tanniehill's sentence has already expired, the circuit court has no jurisdiction to resentence

⁵The petitioner in Williams pleaded guilty and was sentenced in 2003. After serving the two-year confinement portion of his split sentence, he was released on probation in 2005. In 2007, his probation was revoked and he was ordered to serve the balance of his 20-year sentence in prison. The petitioner filed his petition in 2014.

him. If Tanniehill cannot be resentenced, then his plea agreement has not, and unlike in Williams, will never be, rejected by the circuit court. Because there will never be a rejection of Tanniehill's plea agreement, Tanniehill is not entitled to have his conviction and sentence set aside under Williams. Therefore, Tanniehill failed to state a claim upon which Rule 32 relief could be granted and the circuit court erred in granting Tanniehill's Rule 32 petition.

I recognize that, in its brief on appeal, the State does not argue that Tanniehill is not entitled to relief on the ground that his sentence has expired. The State raised that argument in its response to Tanniehill's petition, but has abandoned it on appeal. The general rule is that this Court may affirm a circuit court's judgment if it is correct for any reason, but we may not reverse a circuit court's judgment on a ground not argued by the appellant. However, because a circuit court has no jurisdiction to amend a sentence after it has expired, when the record is clear, as is it in this case, that a Rule 32 petitioner's sentence has expired, I believe this Court must take notice of that fact regardless of whether the issue is raised.

I would reverse the circuit court's judgment and remand this cause for the circuit court to set aside its order granting Tanniehill's Rule 32 petition, to reinstate Tanniehill's conviction and sentence, and to enter an order denying Tanniehill's petition. Therefore, I concur in the result.