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Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-20-0019

Emily Taylor Hydrick

v.

State of Alabama

Appeal from Morgan Circuit Court
(CC-17-885)

COLE, Judge.

Emily Taylor Hydrick appeals the five-year sentence the circuit court imposed on her. According to Hydrick, the circuit court did not have jurisdiction to impose a 5-year sentence when the circuit court originally

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sentenced her to 3 years in the Morgan County jail and it did not modify that sentence within 30 days. We agree with Hydrick.

Facts and Procedural History

Hydrick, pursuant to a negotiated agreement with the State, pleaded guilty to unlawful possession of a controlled substance (methamphetamine), a violation of § 13A-12-212, Ala. Code 1975. Under the plea agreement, Hydrick would be allowed to enter the Morgan County Drug Court Program ("the program"), and, if she successfully completed the program, her case would be dismissed. Hydrick also agreed that if she either quit or was terminated from the program, her failing to complete the program would be considered an aggravating circumstance under the sentencing guidelines (allowing the circuit court to sentence her outside the presumptive sentencing guidelines), and the circuit court would sentence her to three years' imprisonment.

The circuit court accepted Hydrick's guilty plea on January 4, 2020, but, because she entered the program, it did not adjudicate her guilty or sentence her. Ultimately, Hydrick failed to comply with the terms and

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conditions of the program, and, after a hearing, she was terminated from the program.

On June 29, 2020, the circuit court held Hydrick's sentencing hearing. At that hearing, the circuit court, in accordance with the plea agreement, sentenced Hydrick to three years in the Morgan County jail. During the hearing, the following exchange occurred:

"[Hydrick's counsel]: Your Honor, is Mrs. Hydrick required to turn in at this moment or may she turn in at a different hour?

"[Hydrick]: I have some things I need to take care of.

"THE COURT: Like what?

"[Hydrick]: My car payment.

THE COURT: Okay. So you're going to make your payment for this month and then what?

"[Hydrick]: This is my last payment I've got. I just got insurance on my vehicle. I've got tickets and stuff.

"THE COURT: No one else can take care of that for you?

"[Hydrick]: No, sir.

"THE COURT: How long do you need to do it?

"[Hydrick]: Until 5:00, 6:00.

"THE COURT: All right. Here's what we'll do, Mrs, Hydrick. I'll allow you to turn yourself in at the county jail at 6:00 o'clock.

"[Hydrick]: Yes, sir.

"THE COURT: I don't care if your car payment or everything else is squared away or not, if you're not there at 6:00 o'clock you're going to do your three years in prison.

"[Hydrick]: Yes, sir. Thank you.

"THE COURT: And sometimes when I get bored I call the jail to see if people are there. So if you're not there at 6:00 o'clock tonight, if you decide to go on the run then -- [court reporter], let's go back on the record.

"COURT REPORTER: We're still on the record, Judge.

"THE COURT; Here's what I'll tell you. You were sentenced to three years. That was your plea agreement.

"[Hydrick]: Yes, sir.

"THE COURT: Should you choose to not show up by 6:00 o'clock tonight I'm not going to hold myself to the terms and conditions of your plea agreement.

"[Hydrick]: Yes, sir.

"THE COURT: And so in that case that allows me to sentence you anywhere within what the Code of Alabama allows me to do. So 6:00 o'clock or else.

"[Hydrick]: Yes, sir. Thank you.

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(R. 25-27.) Hydrick did not report to begin serving her three-year sentence as ordered.

The following day, June 30, 2020, the circuit court entered a written sentencing order, indicating, among other things, that Hydrick would serve her three-year sentence in the Morgan County Community Corrections Program. The circuit court's written sentencing order also included the following handwritten notation: "[Hydrick] to report to Morgan County Jail at 6:00 pm, on 6/29/20. Failure to report as directed will result in the court setting aside this order & the defendant's plea agreement as previously agreed upon." (C. 70.) That same day, the circuit court also issued an order directing the circuit clerk "to issue a warrant for [Hydrick's] arrest" because Hydrick did not turn herself in. (C. 67.) But the circuit court did not issue an order vacating Hydrick's original sentence. Instead, the circuit court reaffirmed its original sentencing order by entering an amended sentencing order on July 1, 2020, in which the circuit court clarified that Hydrick was "sentenced to THREE (3) years in the custody of the Morgan County Jail" -- not Morgan County Community Corrections. (C. 74.)

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On August 3, 2020, Hydrick was arrested on the outstanding warrant. At a hearing on August 26, 2020, the circuit court explained that it had "told Mrs. Hydrick that [it] would give her -- [it] would basically be allowed to sentence her anywhere within the sentencing range as set forth by the law of the State of Alabama" if she did not turn herself in to the Morgan County jail by 6:00 p.m. on June 29, 2020. (R. 31.) Over Hydrick's objection that the circuit court did not have jurisdiction to resentence her, the circuit court resentenced Hydrick to five years' imprisonment. At the hearing, the circuit court explained that it had the authority to resentence Hydrick because

"there's caselaw out there ... that if an individual is told at their sentencing hearing or at their plea hearing if they don't show up for sentencing then the Court is no longer bound by that agreement. So [it] would be bound by that three years and Mrs. Hydrick would be well into her three year sentence had she simply shown up at the Morgan County Jail like she said she would."

(R. 33-34.)

Thereafter, Hydrick filed a "motion to correct sentence," again arguing that, "because more than thirty (30) days had elapsed since she

had been originally sentenced," the circuit court did not have jurisdiction to modify her sentence. (C. 78.) This appeal follows.

Discussion

On appeal, Hydrick argues that the circuit court erred when it resentenced her to five years' imprisonment because, she says, the circuit court not have jurisdiction to do so.¹

It is well settled that a "motion to alter, amend, or vacate a sentence is the functional equivalent of a [Rule 24, Ala. R. Crim. P.,] motion for a new trial and 'should be treated the same procedurally as a motion for a new trial or a motion in arrest of judgment.'" State v. Monette, 887 So. 2d 314, 315 (Ala. Crim. App. 2004) (quoting Melvin v. State, 583 So. 2d 1365, 1366 (Ala. Crim. App. 1991)). This is true whether the motion is

¹Hydrick also argues that the circuit court "erred when it rescinded the plea agreement." (Hydrick's brief, p. 10.) Because, as we explain below, the circuit court's order resentencing Hydrick to five years' imprisonment is void and must be set aside, the practical effect of setting aside that void order is the reinstatement of Hydrick's three-year sentence, which was imposed in accordance with her plea agreement. Thus, our decision renders Hydrick's argument about rescinding her plea agreement moot.

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filed by the defendant or made by the circuit or district court ex mero motu.

"Rule 24 of the Rules of Criminal Procedure addresses posttrial motions. Rule 24.1 governs motions for a new trial:

" '(a) Power of the Court. When the defendant has been sentenced, the court, on motion of the defendant or on its own motion, may order a new trial.

" '(b) Timeliness. A motion for a new trial must be filed no later than thirty (30) days after sentence is pronounced. After a denial of a motion for a new trial, the previously filed notice of appeal shall be deemed to have been filed as of the date of the denial of the motion and shall include an appeal from the denial of the motion.'

"Rule 24.2 governs motions in arrest of judgment:

" '(a) Power of the Court. The court, on written motion of the defendant or on its own motion, shall arrest judgment if the charging instrument does not charge an offense, or if the court was without jurisdiction of the offense charged.

" '(b) Timeliness. A motion in arrest of judgment shall be filed within thirty (30) days after sentence is pronounced. The court may act on its own motion in arresting judgment only during the period in which a motion in arrest of judgment would be timely.'

"....

"Although this principle is not directly stated in the Rules of Criminal Procedure, the Court of Criminal Appeals has held that if a motion for a new trial or a request to modify a sentence is not filed within 30 days after sentencing, then at the end of the 30th day the trial court loses all jurisdiction to modify a defendant's sentence. Hill v. State, 562 So. 2d 1386 (Ala. Crim. App. 1990); Ex parte Hayden, 531 So. 2d 940 (Ala. Crim. App. 1988)."

Ex parte Hitt, 778 So. 2d 159, 161-62 (Ala. 2000) (emphasis added). So, under Rule 24, Ala. R. Crim. P., a circuit court has jurisdiction to modify a defendant's sentence ex mero motu for only 30 days after the sentence is originally pronounced, and, if the circuit court modifies a sentence on its own accord beyond the 30th day, then the circuit court's order doing so is void. See Ex parte Hitt, 778 So. 2d at 162 (holding that the circuit court's order modifying a defendant's sentence ex mero motu more than 30 days after the original sentence was pronounced rendered the order purporting to modify the original sentence void).

Here, the circuit court sentenced Hydrick to three years in the Morgan County Community Corrections Program on June 29, 2020, and entered an amended sentencing order on July 1, 2020, to clarify that

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Hydrick's three-year sentence was to be served in the Morgan County jail. The circuit court resentenced Hydrick ex mero motu on August 26, 2020 -- increasing her term of punishment from three years to five years and ordering that she serve her sentence in prison instead of the county jail. In other words, the circuit court resentenced Hydrick 58 days after it originally pronounced Hydrick's 3-year sentence. Thus, under Ex parte Hitt, the circuit court's order purporting to resentence Hydrick to five years' imprisonment appears to be void. But, unlike the resentencing that occurred in Ex parte Hitt, the circuit court gave Hydrick an express warning that, if she did not show up to the Morgan County jail when she was ordered to do so, then that failure would "result in the court setting aside [the sentencing order] & [her] plea agreement as previously agreed upon." (C. 70; R. 27.)

According to the State in its brief on appeal, the circuit court's express warning and Hydrick's failure to heed that warning allowed the circuit court to resentence Hydrick more than 30 days after her original sentence was pronounced. In other words, the State asserts that when the circuit court conditions the sentence it pronounces at the sentencing

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hearing on the performance of a certain act, the court retains jurisdiction to modify that sentence beyond 30 days. To support its argument, the State cites State v. Holman, 486 So. 2d 500 (Ala. 1986).

In Holman, the defendant negotiated a plea agreement with the State, under which he would be sentenced to 15 years' imprisonment, that sentence to be served concurrently with his sentence in other pending cases and another pending case Holman had would be nol-prossed. Holman, 486 So. 2d at 501. During the guilty-plea proceeding, the circuit court told Holman that " 'it was imposing additional conditions upon the sentencing agreement,' " including that Holman appear at the sentencing hearing and that he not get arrested on new charges. Holman violated those added conditions when he did not show up to his sentencing hearing and when he was arrested on new charges. As a result, when Holman was brought before the circuit court for sentencing, the circuit court rejected the plea agreement, which included a sentence of 15 years' imprisonment and, instead, sentenced him to life imprisonment. Holman moved to withdraw his guilty plea, and the circuit court denied that motion.

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Holman appealed, arguing that the circuit court erred when it denied his motion to withdraw his guilty plea.

In upholding the circuit court's decision, the Alabama Supreme Court explained that, during the guilty-plea colloquy, the circuit court expressly amended the plea agreement by adding the conditions that Holman appear at the sentencing hearing and that he not be arrested on new charges. The Court held that Holman pleaded guilty "without objection to, and with full knowledge of, the added conditions" to his plea agreement. 486 So. 2d at 503.

So, under Holman, a circuit court may add conditions to a plea agreement and it may reject a plea agreement if a defendant violates those additional conditions, but it may do so only if the additional conditions are expressly articulated to a defendant during a guilty-plea colloquy and the defendant enters his or her guilty plea "without objection to, and with full knowledge of, the added conditions" to the plea agreement. Cf. Saulter v. State, [Ms. CR-18-0986, May 29, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) (holding that the circuit court erred when it did not allow Saulter to withdraw his guilty plea because Saulter's

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plea agreement did not include an express condition that he appear at sentencing, nor did the circuit court condition its acceptance of the plea upon Saulter's appearance at sentencing).

Here, the circuit court expressly told Hydrick that her three-year sentence was conditioned on her turning herself in to the Morgan County jail by 6:00 p.m. on June 29, 2020, and the record indicates that Hydrick clearly understood that condition. But, unlike in Holman, the circuit court's additional condition was not added to her plea agreement or even mentioned during her guilty-plea colloquy. Indeed, Hydrick's guilty plea was entered and accepted long before the circuit court imposed the additional condition on her at the sentencing hearing. Thus, unlike in Holman, the condition that Hydrick turn herself in to the Morgan County jail was not a condition that was added to her plea agreement, nor was it a condition that she accepted "without objection to, and with full knowledge of," before she pleaded guilty.

Despite the procedural and factual differences between this case and Holman, the State maintains that Holman allows circuit courts to impose a sentence on a defendant, condition that sentence on the defendant

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performing certain acts, and then modify that sentence more than 30 days after it was entered if the defendant violates that condition. But applying Holman to situations where courts condition sentences on the performance of certain acts is problematic, as it would allow courts to expand their jurisdiction to modify sentences beyond 30 days after pronouncement of the original sentence.

For example, under the State's theory, a circuit court could impose a three-year sentence on a defendant and, in so doing, condition that sentence on the defendant's completing a term of probation as directed by the court. Then, if the defendant fails to meet the conditions of his probation, the circuit court would be free to "modify" that three-year sentence and increase the sentence up to the maximum authorized by Alabama law.

As explained above, however, it is well settled that, absent the defendant filing a motion to amend sentence or other similar motion, "a trial court [generally] retains jurisdiction to modify a sentence for 30 [only] days after that sentence is pronounced." State v. Monette, 887 So. 2d 314, 315 (Ala. Crim. App. 2004). Two exceptions to that rule are (1)

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circuit courts retain limited jurisdiction to modify a sentence imposed under the Split Sentence Act, see § 15-18-8(g), Ala. Code 1975, and (2) circuit courts retain jurisdiction to, "at any time," modify "previously imposed consecutive sentences [to] run concurrently," see Rule 26.12, Ala. R. Crim. P. In our view, Holman does not authorize circuit courts to freely expand their jurisdiction to unilaterally modify a previously imposed sentence more than 30 days after that sentence was pronounced. Thus, in this case, the circuit court did not have jurisdiction to modify ex mero motu Hydrick's 3-year sentence 58 days after it was pronounced.

Conclusion

Because circuit courts cannot ex mero motu modify a sentence more than 30 days after the pronouncement of a sentence, and because the circuit court purported to resentence Hydrick to 5 years' imprisonment more than 30 days after it had pronounced her 3-year sentence, the circuit court's order resentencing Hydrick to 5 years' imprisonment is void and must be set aside in favor of the original 3-year sentence imposed by the circuit court. Because a void judgment will not support an appeal, see Ex parte Butler, 295 So. 3d 1115, 1117 (Ala. Crim. App. 2019) (holding that,

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"under long-standing precedent, a void order will not support an appeal")
(citing Ex parte Holley, 883 So. 2d 266, 268 (Ala. Crim. App. 2003),
Hydrick's appeal is due to be dismissed.

APPEAL DISMISSED.

Windom, P.J., concurs. Minor, J., concurs in the result. Kellum, J.,
dissents, with opinion, which McCool, J., joins.

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KELLUM, Judge, dissenting.

I agree that the circuit court lacked jurisdiction to resentence Emily Taylor Hydrick to 5 years' imprisonment more than 30 days after the court had initially sentenced her to 3 years' imprisonment. However, because this Court has no jurisdiction over an appeal from a void judgment, and, thus, no jurisdiction to grant Hydrick relief from the increased sentence, I would, as this Court has done in the past, treat Hydrick's appeal as a petition for a writ of mandamus and grant her the relief to which she is entitled. See, e.g., Ex parte Butler, 295 So. 3d 1115, 1117 (Ala. Crim. App. 2019) ("Because Butler challenges the circuit court's subject-matter jurisdiction to order her to pay restitution and because it is well settled that 'the question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus,' see, e.g., Ex parte Flint Construction Co., 775 So. 2d 805, 808 (Ala. 2000), we exercise our discretion under the Rules of Appellate Procedure to treat Butler's timely filed appeal as a petition for a writ of mandamus."). Therefore, I respectfully dissent.

McCool, J. concurs.