



IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

STATE OF ALABAMA

)

V.

)

) Case No.: CC-2014-000565.00

)

HUBBARD MICHAEL GREGORY

)

Defendant.

)

ORDER

On or about August 9, 2016, the Defendant in the above styled matter was sentenced to the following:

- Count 5: Voting on Legislation with a Conflict of Interest (§36-25-5(b)) Sentenced to 10 years split to serve 2 years to run concurrently followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 6: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 10 years split to serve 2 years to run concurrently followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 10: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 6 years split to serve 18 months to run concurrently followed by 4 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 11: Use of Position/Office for Personal Gain (§36-25-5(a)) Sentenced to 10 years split to serve 2 years followed by 8 years supervised probation. This is to run concurrent with counts 12, 13, and 14 and consecutive to counts 5 and 6. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 12: Lobbying before Executive Department or Agency (§36-25-1.1) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 13, and 14 and consecutive to

5 and 6; followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$20,000.00.

- Count 13: Lobbying before Executive Department or Agency (§36-25-1.1) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 12, and 14 and consecutive to 5 and 6; followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 14: Use of Position/Office for Personal Gain (§36-25-5(c)) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 12, and 13 and consecutive to 5 and 6; followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 16: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 5 years split to serve 18 months to run concurrently followed by 3 ½ years supervised probation. Fines and fees were also assessed.
- Count 17: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 10 years split to serve 2 years to run concurrently followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$20,000.00.
- Count 18: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 5 years split to serve 18 months to run concurrently followed by 3 ½ years supervised probation. Fines and fees were also assessed.
- Count 19: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 5 years split to serve 18 months to run concurrently followed by 3 ½ years supervised probation
- Count 23: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 5 years split to serve 18 months to run concurrently followed by 3 ½ years supervised probation. Fines and fees were also assessed.

On August 27, 2018, the Alabama Court of Criminal Appeals entered an order reversing the conviction on count 5 and affirming the convictions in all other counts. The Defendant

petitioned the Supreme Court of Alabama for certiorari review of the 11 counts affirmed by the Court of Criminal Appeals. On April 10, 2020, the Alabama Supreme Court affirmed counts 6, 10, 11, 12, 13, and 14 and reversed the convictions on counts 16, 17, 18, 19, and 23. The Court affirmed the Court of Criminal Appeals reversal of count 5. On October 21, 2020, the Court entered an order regarding the remaining counts. Therefore, the remaining sentences/counts are:

- Count 6: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 10 years split to serve 2 years to run concurrently followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 10: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 6 years split to serve 18 months to run concurrently followed by 4 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 11: Use of Position/Office for Personal Gain (§36-25-5(a)) Sentenced to 10 years split to serve 2 years to run concurrently with 12, 13, and 14 and consecutive to count 6 followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 12: Lobbying before Executive Department or Agency (§36-25-1.1) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 13, and 14 and consecutive to 6; followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$20,000.00.
- Count 13: Lobbying before Executive Department or Agency (§36-25-1.1) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 12, and 14 and consecutive to 6; followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.
- Count 14: Use of Position/Office for Personal Gain (§36-25-5(c)) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 12, and 13 and consecutive to 6; followed by 8 years supervised probation. The Defendant was additionally ordered to pay fees and fines including a fine of \$30,000.00.

The Defendant filed a Motion to Revise Sentence on September 18, 2020. The State filed its response and objection to the Defendant's motion on September 22, 2020. The Defendant notes that of the twelve counts the Defendant was convicted of, six were reversed by the appellate courts. The Defendant further notes the concurring opinion by Justice Bryan joined Justice Wise regarding the length of the Defendant's sentences. Justice Bryan stated:

Finally, although a jury could have found Hubbard guilty of the crimes he was charged with in count 6 and counts 10 through 14, given my concerns about the current version of the Ethics Code, I am not entirely convinced that the sentences Hubbard received were the most appropriate form of punishment. The length of Hubbard's sentences, in comparison to his conduct, has been a concern since my initial consideration of this case.

(Opinion at p. 84).

The State filed a response on September 22, 2020. The State points out in its brief, "Hubbard's refusal to admit any guilt or express any remorse makes him wholly unfit to receive any leniency..." (State's Response 9/22/20; p. 1). The State argues that leniency is not something one is entitled to, but rather something that should be earned. The State further argues that Hubbard is a six-time felon who has not expressed remorse or assumed responsibility for his actions. In support of this argument, on page eight of their response the State cites a news article dated September 11, 2020 quoting the Defendant's Attorney maintaining the Defendant's innocence in these matters. The State concludes with the contention that the Defendant's Motion to Revise Sentence is due to be denied.

The Court took these matters under advisement. The Defendant did not file a reply to the State's September 22, 2020 response to counter the Assistant Attorney General's statement that the Defendant has failed to assume responsibility or display remorse for his actions.¹

The Court in determining whether the Defendant should receive a reduction in sentence reviewed *Ala. Code 1975 § 15-12-8(a)*, *Ala. Code 1975 § 15-12-8(g)*, and *Alabama Rules of Criminal Procedure* Rule 26.12. The Court also considers, "This power of the courts to grant probation is a matter of grace and lies entirely within the sound discretion of the trial court." *Wray v. State*, 472 So.2d 1119, 1121 (Ala. 1985). Furthermore, the Court must consider the

¹ This Court does not in any way intend to suggest that the Defendant has any legal duty to assume responsibility or express remorse for his actions. He has every right to maintain his innocence and seek whatever further remedies are available to him.

nature of the Defendant's crimes. Acts of public corruption harm not just those directly involved, but harm society as a whole. *United States v. McNair*, 605 F3d 1152, 1215 (11th Cir. 2010). In fact, a corrupt public official may do more harm to society than an average "common criminal." *Baucom v. Martin*, 677 F.2d 1346, 1351 (11th Cir. 1982).

The Court when originally sentencing the Defendant considered the fact that the Defendant had been convicted of twelve class B felonies. In consideration of these twelve counts, the Court sentenced the Defendant to split sentences that resulted in a total of four years of confinement. As this was a factor in how the Court constructed the Defendant's split sentences, the Court should respectfully consider the decisions of the Court of Criminal Appeals and the Supreme Court of Alabama and take the counts that were reversed into consideration. Therefore, only the remaining number of counts should be strongly considered in the Defendant's final sentence. Six counts were reversed during the appellate process. The Defendant is now convicted of six class B felonies. In four of the reversed counts, the Defendant was sentenced to serve an 18-month split sentence. In two counts, he was sentenced to a 24-month split sentence. Therefore, after due consideration of the Order of the Alabama Court of Criminal Appeals, the Order of the Supreme Court of Alabama, the arguments made by both the State and Defendant, the length of the sentences reversed by the appellate courts, and this Court's original sentencing order, the Court revises the Defendant's sentence. The Defendant's sentence is revised from a total split time to serve of 48 months to a total split time to serve of 28 months.

It is therefore, ORDERED, ADJUDGED and DECREED that:

Pursuant to *Ala. Code 1975 § 15-12-8(g)* and *Ala. R. Cr. P. Rule 26.12*, the Defendant's sentence is revised to:

- Count 6: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 10 years split to serve 2 years to run concurrently. This sentence remains the same except that the probationary term is revised to 5 years of supervised probation.
- Count 10: Lobbying for Personal Gain/Solicitation or Receiving of a Thing of Value from Lobbying (§36-25-5.1(a)) Sentenced to 6 years split to serve 18 months to run concurrently. This is to be followed by 4 years of supervised probation. This sentence remains the same.

- Count 11: Use of Position/Office for Personal Gain (§36-25-5(a)) Sentenced to 10 years split to serve 2 years to run concurrently with 12, 13, and 14 and consecutive with 6. *20 months of the 24 months split to serve is suspended.* This will result in a 4-month split sentence. This is to be followed by *5 years* of supervised probation.
- Count 12: Lobbying before Executive Department or Agency (§36-25-1.1) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 13, and 14 and consecutive with 6. *20 months of the 24 months split to serve is suspended.* This will result in a 4-month split sentence. This is to be followed by *5 years* of supervised probation.
- Count 13: Lobbying before Executive Department or Agency (§36-25-1.1) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 12, and 14 and consecutive with 6. *20 months of the 24 months split to serve is suspended.* This will result in a 4-month split sentence. This is to be followed by *5 years* of supervised probation.
- Count 14: Use of Position/Office for Personal Gain (§36-25-5(c)) Sentenced to 10 years split to serve 2 years to run concurrently with 11, 12, and 13 and consecutive with 6. *20 months of the 24 months split to serve is suspended.* This will result in a 4-month split sentence. This is to be followed by *5 years* of supervised probation.

This revision results in a total of 28 months confinement. The fines, fees, and other assessments remain as stated in the applicable sentencing orders.

Any other relief requested not granted is hereby denied. This order disposes of the Defendant's Motion to Revise Sentence and all pending motions before this Court in this matter.

DONE this 25th day of November, 2020.

/s/ HON. JACOB A. WALKER III
CIRCUIT JUDGE