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SUMMARY
June 1, 2023

2023COA46

**No. 21CA0399, *People v. Snedeker* — Criminal Law —
Sentencing — Probation**

A division of the court of appeals holds that (1) after a prison-plus-probation sentence is found to be illegal under *Allman v. People*, 2019 CO 78, the court may resentence the defendant to probation even if the defendant has served the prison portion of the original, illegal sentence; and (2) a court may sentence a defendant to prison on a charge in one case and to probation on a charge in another case as part of a global disposition of charges without running afoul of *Allman*.

Court of Appeals No. 21CA0399
Boulder County District Court No. 13CR1903
Honorable Ingrid S. Bakke, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Bradford Wayne Snedeker,

Defendant-Appellant.

ORDER AFFIRMED

Division III
Opinion by JUDGE J. JONES
Dunn and Lum, JJ., concur

Announced June 1, 2023

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¶ 1 Defendant, Bradford Wayne Snedeker, appeals the district court's order imposing a sentence to probation after the court found that his previous prison-plus-probation sentence was illegal under *Allman v. People*, 2019 CO 78. We affirm the order. In so doing, we hold that a court may resentence a defendant to probation after the defendant has served the prison portion of a prison-plus-probation sentence that was found to be illegal under *Allman*. And we hold that *Allman's* ban on prison-plus-probation sentences doesn't apply when a court sentences a defendant to prison for an offense in one case and to probation for an offense in another case as part of a global disposition of charges.

I. Background

¶ 2 A jury found Snedeker guilty of two counts of securities fraud and two counts of theft, and the district court sentenced him to (1) four years in the custody of the Department of Corrections (DOC) on the securities fraud counts, and (2) a consecutive term of one year of work release and twenty years of economic crimes probation on the theft counts. A division of this court later vacated one count of securities fraud and one count of theft, but Snedeker's overall sentence remained unchanged. *See People v. Snedeker*, slip op. at

¶ 64 (Colo. App. No. 15CA1578, Nov. 2, 2017) (not published pursuant to C.A.R. 35(e)).

¶ 3 Snedeker’s prison sentence began in July 2015; he started work release in June 2018; and he entered a day reporting program in October 2018. In June 2019, the probation department took him into custody and filed a complaint alleging numerous probation violations. Snedeker posted bond the following month.

¶ 4 Before Snedeker’s probation revocation hearing, the Colorado Supreme Court issued its opinion in *Allman*, holding that “when a court sentences a defendant for multiple offenses in the same case, it may not impose imprisonment for some offenses and probation for others.” *Allman*, ¶ 28. Snedeker moved to dismiss the probation violation complaint, alleging that his probation sentence was illegal under *Allman*. The prosecutor conceded that Snedeker should be resentenced and didn’t object to dismissal of the complaint. The district court dismissed the complaint and set a resentencing hearing.

¶ 5 At the February 2021 resentencing, the People recommended a twelve-year DOC sentence because, as alleged in the probation violation complaint, Snedeker had continued to engage in the same

behavior that led to his convictions. Snedeker asked the court to simply terminate his sentence. The court took a different path, resentencing Snedeker to twenty years of probation and granted four years of credit for time already served. The court simultaneously resentenced Snedeker in another case, revoking the original fifteen-year economic crimes probation sentence and resentencing him to four years in DOC custody. It ordered the sentences in both cases to run concurrently.

¶ 6 On appeal, as at resentencing, Snedeker contends that his new sentence is illegal under *Allman* because he will complete both a prison and probation sentence in the same case. He also contends, for the first time on appeal, that his new sentence is illegal under *Allman* because the district court simultaneously imposed both prison and probation sentences in separate cases. We conclude that *Allman* doesn't prohibit the imposition of a new probation sentence.

II. Discussion

¶ 7 The legality of a sentence is a question of law that we review de novo. *People v. Bassford*, 2014 COA 15, ¶ 20. In this case, we review only the narrow issue raised: whether Snedeker's new

sentence is illegal in light of the holding and rationale applied in *Allman*.

¶ 8 *Allman* holds that section 18-1.3-203, C.R.S. 2022 (the probation statute), “requires a choice between prison and probation”; the statute does not allow courts to impose prison sentences for certain non-sex offenses and probation for other non-sex offenses *in the same case*. *Allman*, ¶¶ 34, 40; *see also People v. Manaois*, 2021 CO 49, ¶ 3 (this mandate doesn’t apply to sentencing under the Colorado Sex Offender Lifetime Supervision Act of 1998 (SOLSA), which is a stand-alone sentencing scheme). However, *Allman* explicitly declined to address whether the probation statute prohibits sentencing to both imprisonment and probation *in separate cases*. *Allman*, ¶ 3 n.4.

A. Reimposing Probation in This Case

¶ 9 *Allman* does not fully address the first question before us: Can a district court legally reimpose a probation sentence after a defendant has already served the prison portion of an illegal prison-plus-probation dual sentence? Under the circumstances, and following *Bassford*, we answer that question in the affirmative.

¶ 10 To begin, we observe that Snedeker’s original sentence wasn’t severable, such that only one component of the dual sentence was illegal, while the other component was legal. *See Bassford*, ¶ 44; *see also Delgado v. People*, 105 P.3d 634, 637 (Colo. 2005) (“[A]s long as any aspect of a sentence is inconsistent with statutory requirements, the complete sentence is illegal.”). Rather, it was the combination of both prison and probation components that rendered Snedeker’s entire sentence illegal. *See Allman*, ¶¶ 34, 40. Under these circumstances, the entire original sentence is *void*, and the proper remedy isn’t “lopping off” the probation sentence — the proper remedy is resentencing and imposing a legal sentence. *See Bassford*, ¶¶ 44-46 (resentencing, rather than lopping, was the proper remedy for a defendant who had already been released from prison on an illegal sentence imposing prison and probation terms on a single count).

¶ 11 Our analysis is unaffected by the particular facts of this case, where Snedeker has already fully served the prison component of his sentence. *See id.* Although Snedeker’s original sentence included only four years of imprisonment, the DOC term was just one part of an overall sentencing scheme for his crimes. *See People*

v. Johnson, 2016 COA 15, ¶ 25 (“In multicount cases, judges typically craft sentences on the various counts as part of an overall sentencing scheme”). Snedeker cites no legal authority in support of the proposition that a district court should be divested of its broad discretion over sentencing decisions under these circumstances, and we aren’t aware of any. *See id.* (when a sentencing scheme unravels, the court “should have the discretion to reevaluate the underlying facts and sentences”). We therefore perceive no reason that a probation sentence should be unavailable here.

¶ 12 We are mindful of the concerns that under circumstances like these, resentencing could either provide a windfall for defendants or penalize them for contesting an illegal sentence. *See Bassford*, ¶¶ 31, 32. The district court addressed these fairness concerns by granting Snedeker four years of credit toward his new probation sentence. *See id.* at ¶ 32 (“The portion of an illegal sentence which has been served cannot be ignored in instituting a valid sentence.”). As a result, Snedeker’s new total sentence is four years shorter than his original sentence. And despite his probation revocation in another economic crimes case and a prolonged resentencing delay,

Snedeker — by his own calculations — will complete his sentences for both cases two years earlier than under the original sentencing scheme.

¶ 13 Because Snedeker’s prior sentence is void, and the new sentence is a probation sentence without any prison component, we conclude that Snedeker’s new sentence conforms to *Allman*’s interpretation of the probation statute. It is a legal sentence. Moreover, we perceive no abuse of discretion in the court’s fashioned remedy. *See Allman*, ¶ 22 (“The sentencing court generally has broad discretion when imposing sentences”).

B. Prison and Probation Sentencing in Separate Cases

¶ 14 Snedeker next argues that, under *Allman*, because the district court simultaneously resentenced him in two separate cases, it couldn’t legally impose a probation sentence in this case and a prison sentence in the other. We reject this argument.

¶ 15 *Allman* doesn’t say anything about whether a district court may impose prison and probation sentences in separate cases, and we decline to extend *Allman* to that situation. True, though *Allman* relied primarily on the language of the relevant sentencing statutes, it also observed that a practical consequence of prison-plus-

probation sentencing is that defendants will be “simultaneously subject to two separate branches of government during their post-incarceration supervision.” *Id.* at ¶ 39.¹ But it expressly did so in the context of considering limits on sentencing in a single case. *Id.* at ¶¶ 3, 28, 32, 33, 37-40. Indeed, the court noted that it wasn’t addressing “whether a court may impose sentences to both imprisonment and probation in separate cases.” *Id.* at ¶ 3 n.4.

¶ 16 We don’t see anything in the statutes considered by the court in *Allman* indicating that a court’s hands are tied to sentencing a defendant to prison or probation depending on whether a court in another case sentenced the same defendant to prison or probation. That is, nothing in the sentencing statutes indicates that if a court in one case sentenced a defendant to probation, a court in another case can’t sentence the same defendant to prison, or vice-versa, regardless of the relevant sentencing facts in the latter case. Absent such direction from the General Assembly, we decline to further curtail the sentencing discretion afforded to the trial courts.

¹ When a defendant is on probation, he is supervised by the judicial branch, but when he is on parole, he is supervised by the executive branch.

And we observe that the supreme court has permitted prison-plus-probation sentences in the SOLSA context, indicating that there is no per se bar to a defendant being supervised by both branches at the same time. *See Manaois*, 2021 CO 49; *People v. Keen*, 2021 CO 50; *People v. Lowe*, 2021 CO 51; *People v. Coleman*, 2021 CO 52; *People v. Rainey*, 2021 CO 53.

III. Disposition

¶ 17 We conclude that the district court legally resentenced Snedeker to twenty years of probation with four years of credit for time served. The order is affirmed.

JUDGE DUNN and JUDGE LUM concur.