

COURT OF APPEALS OF VIRGINIA

Record No. 0640-25-3

ROY DAVIS
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Athey, Ortiz and Causey

Argued at Lexington, Virginia

Opinion Issued September 15, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

F. Patrick Yeatts, Judge

(Matthew L. Pack; M. Pack Law, PLLC, on brief), for appellant. Appellant submitting on brief.

Sheri H. Kelly, Assistant Attorney General (Jason S. Miyares, Attorney General,¹ on brief), for appellee.

MEMORANDUM OPINION BY JUDGE DANIEL E. ORTIZ

A jury convicted Roy Davis (“Davis”) of unlawful wounding and reckless handling of a firearm. The trial court sentenced Davis to 5 years and 12 months of incarceration, with 1 year and 6 months suspended. The suspended sentence was conditioned on a term of ten years of good behavior, along with other conditions. On appeal, Davis claims that the trial court abused its discretion at sentencing by imposing a period of suspension in excess of the applicable statutory maximum. He also challenges the sufficiency of the evidence to sustain his convictions. The record contains sufficient evidence to convict Davis of unlawful wounding and reckless handling of a firearm, and we affirm his convictions. But given that the period of

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

suspension exceeds the applicable statutory maximum authorized by Code §§ 19.2-303 and -303.1, the sentencing order is void ab initio. To that end, we vacate the sentence and remand for resentencing within the statutorily permitted limits.

BACKGROUND²

Taleba Hughey and Davis were in a relationship for about two years. During that time, Davis lived in Hughey's home with Hughey and her daughter, Chanell Banks. Hughey and Davis were engaged to be married but decided to "call[] off their marriage."

Banks came home one evening "to get ready for work . . . [and] to talk to [her] mom" about the reasons for the end of the engagement. Both Hughey and Davis were at the house when Banks arrived. When Banks asked her mother why she and Davis had ended their engagement, Davis joined the conversation and told Banks that she was being "disrespectful." The situation "spiraled from there." Davis got angry and "punched" Banks in the mouth. Banks left the house, got into her car, and called 911.

While Banks was on the line with the 911 operator, Davis exited the house armed with a pistol. Davis walked to "the front of the car," "pointed the gun" at Banks, and fired. The bullet struck Banks's windshield. Davis then walked around to the driver's side of Banks's car and fired a second shot through the front driver's side window. Glass from the shattered windows struck Banks in the face, cutting her on the "forehead . . . mouth, and . . . cheeks." Davis got into his truck, which was parallel parked on the street right in front of Banks's car, and drove away.

² We recite the facts "in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). In doing so, we discard any evidence that conflicts with the Commonwealth's evidence, and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

Officers from the Lynchburg Police Department arrived within five to seven minutes of the shooting. Officer N.K. Dyke found two bullet casings: one behind Banks's car, and one on the trunk. Emily Joseph, a crime scene technician with the department, also responded to and documented the damage to Banks's car. Davis was arrested the next day.

At trial, Banks testified that Davis fired a gun at her twice while she was sitting in her car on the phone with a 911 operator. A recording of her 911 call was entered into evidence. Hughey corroborated Banks's account and recalled Davis hitting Banks in the face and that the argument between Banks and Davis escalated. Hughey testified that Davis stood in front of Banks's car, pulled a gun from "[h]is pocket" and "shot twice at [Banks's] car."

Officer Dyke testified that when she arrived on scene, Banks had "visible injuries . . . to her face." Body camera footage from one of the responding officers was entered into evidence, which depicted Banks with blood all over her face. Pictures of her wounds were also entered into evidence. Dyke recalled finding two bullet casings on Banks's car. Officer Joseph testified that there was a bullet hole in the windshield and driver side window of Banks's car.

Davis moved to strike the evidence at the close of the Commonwealth's case arguing against the presence of malicious intent because the evidence demonstrated "heat of passion." He also claimed that he did not cause Banks's injuries, but that her injuries were "ancillary" to his firing a weapon into her car. He asked the court to "reduce the charge to unlawful wounding rather than malicious wounding" and "strike the reckless handling of a firearm" charge. The trial court denied Davis's motion to strike because the jury should "determine whether the act was done unlawfully or maliciously." It also found that Banks's injuries "resulted from" Davis's "act of shooting," regardless of whether she was struck by the bullets or not.

Davis testified that while Banks was sitting in her car, she brandished a firearm and said, "put your mother fucking hands on me one more time, I'm going to kill you," and then hit him with

her car. According to Davis, Banks’s car pinned him to his truck, and he could not move. Then he “actually fell down after she hit [him] with the car.” When he fell, his “revolver . . . fell out” of his pocket, so he picked it up and fired “one shot” into the air. He claimed that Banks then “jumped out” of her car and fired two shots at him.

The trial court denied Davis’s renewed motion to strike the evidence. The jury convicted Davis of unlawful wounding and reckless handling of a firearm. The trial court sentenced Davis to a term of five years of incarceration (with one year suspended) for the unlawful wounding charge and 12 months (with six months suspended) on the reckless handling charge. The suspended term of one year and six months was conditioned on ten years’ good behavior.³ This appeal followed.

ANALYSIS

I. Sufficiency of the Evidence

“When faced with a challenge to the sufficiency of the evidence supporting a criminal conviction, an appellate court is faced with the limited task of determining ‘whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Cuffee v. Commonwealth*, ___ Va. ___, ___ (Apr. 16, 2026) (quoting *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024)). “The judgment of the trial court is presumed correct and will not be disturbed unless it is ‘plainly wrong or without evidence to support it.’” *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). Thus, “[i]f there is evidentiary support for the conviction, a trial court’s judgment stands.” *Reed v. Commonwealth*, 85 Va. App. 196, 207 (2025).

In challenging the sufficiency of the evidence, Davis emphasizes that his testimony was contrary to that given by Banks and Hughey and that the Commonwealth resultingly failed to

³ The trial court also imposed a period of supervised probation and a no contact condition.

eliminate a reasonable doubt as to whether Davis caused Banks bodily injury as required by Code § 18.2-51. He asserts that Banks hit him with her car, he fired a “single shot into the air” in response, and then Banks shot at him. He concludes, therefore, that the evidence did not prove beyond a reasonable doubt that his conduct caused Banks’s injuries. Similarly, he relies on his own testimony to argue that the evidence was also insufficient to show that he “handled a firearm” in a “gross, wanton, and culpable” manner causing “serious bodily injury . . . or significant impairment.”

A. Unlawful Wounding

“If any person” unlawfully “shoot, stab, cut, or wound any person or by any means *cause* him bodily injury, with the intent to maim, disfigure, disable, or kill,” they are guilty of unlawful wounding. Code § 18.2-51 (emphasis added). Wounding is any “breach of the skin . . . produced by external violence.” *Johnson v. Commonwealth*, 184 Va. 409, 413 (1945). But the maiming statute “has been more broadly interpreted to include *any* bodily injury.” *English v. Commonwealth*, 58 Va. App. 711, 718 (2011). The requisite injury “includes any ‘detriment, hurt, loss, [or] impairment’ that could fairly be considered an injury to the human body.” *Id.* at 718-19 (quoting *Johnson*, 184 Va. at 416). “Bodily injury can be ‘*any bodily hurt* whatsoever’ caused by *any means*.” *Commonwealth v. Perkins*, 295 Va. 323, 328 (2018) (quoting *Bryant v. Commonwealth*, 189 Va. 310, 316 (1949)). “The test of the offense of maliciously or unlawfully causing bodily injury is the intent with which the result is accomplished rather than the nature of the means.” *Bryant*, 189 Va. at 317.

The evidence established that Davis was “angry” with Banks and punched her in the mouth. Banks tried to remove herself from the situation, but Davis armed himself with a pistol and followed her outside. Davis stood in front of Banks’s car and fired into the windshield and driver’s side window as Banks sat in her car. Glass shattered and Banks suffered numerous “visible injuries . . . to her face.”

From this evidence, the jury properly concluded that Davis caused Banks's injuries by firing a gun at her through her car windows because the statutory language "'by any means,' include[s] such means." *Bryant*, 189 Va. at 317. Likewise, the jury reasonably could infer that Davis acted with the requisite intent when he fired the pistol into her vehicle multiple times. *Brown v. Commonwealth*, 68 Va. App. 746, 788 (2018) ("[T]he 'fact finder may infer that a person intends the immediate, direct, and necessary consequences of his voluntary acts.'" (quoting *Robertson v. Commonwealth*, 31 Va. App. 814, 820 (2000))); *Smith v. Commonwealth*, 72 Va. App. 523, 536 (2020) ("[W]hether the required intent exists is generally a question of fact for the trier of fact." (quoting *Brown*, 68 Va. App. at 787)). "Reasonable inferences drawn by the factfinder 'cannot be upended on appeal unless we deem them so attenuated that they push into the realm of *non sequitur*.'" *Commonwealth v. Wilkerson*, 304 Va. 92, 100 (2025) (quoting *Perkins*, 295 Va. at 332).

"Determining the credibility of witnesses . . . is within the exclusive province of the jury, which has the unique opportunity to observe the demeanor of the witnesses as they testify." *Dalton v. Commonwealth*, 64 Va. App. 512, 525-26 (2015) (alteration in original) (quoting *Lea v. Commonwealth*, 16 Va. App. 300, 304 (1993)). "In its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt." *Flanagan v. Commonwealth*, 58 Va. App. 681, 702 (2011) (quoting *Marable v. Commonwealth*, 27 Va. App. 505, 509-10 (1998)). The jury was thereby permitted to reject Davis's version of events and accept as true the testimony of the Commonwealth's witnesses. Credible evidence supports the jury's verdict, and we may not disturb that determination. *Cuffee*, ___ Va. at ___.

B. Reckless Handling of a Firearm

“It shall be unlawful for any person to handle recklessly any firearm so as to endanger the life, limb or property of any person. Any person violating this section shall be guilty of a Class 1 misdemeanor.” Code § 18.2-56.1(A). “As this Court has explained, the reckless handling of a firearm is not limited to a handling ‘so gross, wanton or culpable as to show a reckless disregard of human life.’” *Edelstein v. Commonwealth*, 83 Va. App. 345, 361 (2025) (quoting *Darnell v. Commonwealth*, 6 Va. App. 485, 492 (1988)). The level of culpability “necessary for reckless conduct falls” somewhere between “criminal negligence . . . and ordinary negligence.” *Id.* (quoting *Mangano v. Commonwealth*, 44 Va. App. 210, 217 (2004)). “It follows that ‘reckless conduct requires an awareness that serious injury will likely result.’” *Id.* (quoting *Mangano*, 44 Va. App. at 217).

Davis highlights his own testimony and argues that the jury “heard conflicting evidence about the alleged firing of the gun.” In making his argument, Davis conflates the elements of felony reckless handling of a firearm with the requisites for a misdemeanor conviction, thereby inserting elements that the Commonwealth was not required to prove.

Davis intentionally fired a gun through the windshield and driver side window of Banks’s car as she sat in the driver’s seat. The shattered glass cut Banks’s face. From this evidence, the jury reasonably concluded that Davis’s actions endangered Banks’s life, limb, and property. *Perkins*, 295 Va. at 332 (holding that the factfinder is permitted to “draw reasonable inferences from basic facts to ultimate facts” (quoting *Bowman v. Commonwealth*, 290 Va. 492, 500 (2015))). And as stated above, the jury was permitted to accept Banks’s testimony and reject Davis’s account. *Dalton*, 64 Va. App. at 525-26; *Flanagan*, 58 Va. App. at 702.

II. The trial court's order imposing an excessive period of suspension was void ab initio.

The determination of a defendant's sentence "lies within the sound discretion of the trial court. A sentencing decision will not be reversed unless the trial court abused its discretion." *Garibaldi v. Commonwealth*, 71 Va. App. 64, 67 (2019) (quoting *Martin v. Commonwealth*, 274 Va. 733, 735 (2007)). "[W]hen a statute prescribes a maximum imprisonment penalty and the sentence does not exceed that maximum, the sentence will not be overturned as being an abuse of discretion." *Minh Duy Du v. Commonwealth*, 292 Va. 555, 564 (2016) (quoting *Alston v. Commonwealth*, 274 Va. 759, 771-72 (2007)). "In determining whether a circuit court abused its discretion, 'we do not substitute our judgment for that of the trial court. Rather, we consider only whether the record fairly supports the trial court's action.'" *Garibaldi*, 71 Va. App. at 67 (quoting *Grattan v. Commonwealth*, 278 Va. 602, 620 (2009)). "Only when reasonable jurists could not differ can we say an abuse of discretion has occurred." *Id.* (quoting *Thomas v. Commonwealth*, 44 Va. App. 741, 753 (2005)). "Whether a court has . . . jurisdiction" to impose a sentence "is a question of law we review de novo." *Hannah v. Commonwealth*, 303 Va. 106, 123 (2024).

Davis claims that the trial court "abused its discretion by imposing ten years of good behavior." He argues that the good behavior period "exceeds the statutor[ily] authori[zed]" maximum penalty. The Commonwealth agrees that the trial court had abused its discretion by imposing the good behavior period. But the Commonwealth argues that Davis waived this argument because he did not object to the good behavior period and conditions placed on his suspended sentence, nor did he move within twenty-one days of sentencing to vacate the excessive period of good behavior.⁴

⁴ Davis filed a motion to reconsider sentencing with the trial court 24 days after the sentencing order was entered. Rule 1:1(a) divests the trial court of jurisdiction to modify, vacate, or suspend its judgments and orders after the passage of 21 days after the date of entry. "That

It is true that “[n]o ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice.” Rule 5A:18. Davis acknowledges the default but asks this court to invoke the ends of justice exception to Rule 5A:18 to consider his assignment of error. The issue before this court is whether Davis’s preservation failure waived his argument on appeal. We find that it did not.

“Rule 5A:18 permits us to overlook the appellant’s failure to preserve the issue and consider the merits of his argument for the first time on appeal if the ends of justice so demand.” *Brittle v. Commonwealth*, 54 Va. App. 505, 512 (2009). “‘The ends of justice exception is narrow and is to be used sparingly,’ and applies only in the extraordinary situation where a miscarriage of justice has occurred.” *Cornell v. Commonwealth*, 76 Va. App. 17, 31 (2022) (quoting *Conley v. Commonwealth*, 74 Va. App. 658, 682 (2022)). “In determining whether the exception applies, the Court considers two questions: ‘(1) whether there is error as contended by the appellant; and (2) whether the failure to apply the ends of justice provision would result in a grave injustice.’” *Id.* at 30 (quoting *Williams v. Commonwealth*, 294 Va. 25, 27-28 (2017)). “The burden of establishing a manifest injustice is a heavy one, and it rests with the appellant.” *Id.* at 31 (quoting *Conley*, 74 Va. App. at 683).

“An order of a court of the Commonwealth can be ‘void’ by operation of two concepts.” *Kelley v. Stamos*, 285 Va. 68, 75 (2013). First, an “order may be ‘void ab initio,’ meaning it was without effect from the moment it came into existence. In that respect it is ‘void.’ Such a void order is a nullity without force or effect and may be collaterally challenged,” even if unpreserved on appeal. *Id.* Second, an order may be “‘voidable’ if it contains reversible error. [Such an]

rule is ‘mandatory in order to assure the certainty and stability that the finality of judgments brings.’” *Dobson v. Commonwealth*, 76 Va. App. 524, 529 (2023) (quoting *Super Fresh Food Mkts. of Va., Inc. v. Ruffin*, 263 Va. 555, 563 (2002)).

order is not ‘void’ until it is directly and successfully challenged.” *Id.* (citation omitted). “The distinction between an action of the court that is void *ab initio* rather than merely voidable is that the former involves the underlying authority of a court to act on a matter whereas the latter involves actions taken by a court which are in error.” *Singh v. Mooney*, 261 Va. 48, 51 (2001). “Voidable judgments are more common and usually involve a court’s failure to comply with precedent or an applicable statute.” *Hannah*, 303 Va. at 120. Unlike void errors, but “[l]ike any ordinary legal error in a proceeding below, objections to voidable errors must be preserved and brought before courts of appeal pursuant to our procedural Rules.” *Id.*; see Rule 5A:18 (detailing requirements to preserve an issue for consideration by the Court of Appeals). The ends of justice provision can apply even with an error that makes an order “merely voidable.” See *Herring v. Herring*, 33 Va. App. 281, 287 (2000) (applying ends of justice due to court’s error in failing to make explicit findings before calculating support amount); *Oliver v. Commonwealth*, 38 Va. App. 845, 848 (2002) (applying ends of justice to reach erroneous revocation of suspended sentence); *Newton v. Richmond*, 198 Va. 869, 872 (1957) (applying ends of justice for evidentiary admissibility question).

A trial court “may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine.” Code § 19.2-303. “In any case where a court suspends the imposition or execution of a sentence, it may fix the period of suspension for up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned.” Code § 19.2-303.1. Yet Code §§ 19.2-303 and -303.1 are not jurisdictional statutes and do not modify a court’s subject matter jurisdiction. *Manley v. Commonwealth*, 86 Va. App. 308, 319-21 (2025). Rather, these statutes affect a trial court’s active jurisdiction over sentencing. *Id.* at 319. So long as the trial court “possess[es] valid subject matter jurisdiction,” it “may err in the proper

exercise” of its discretionary authority under Code §§ 19.2-303 and -303.1 to impose conditions on sentencing. *Id.* (quoting *Hannah*, 303 Va. at 123).

“Code §§ 19.2-303.1 and -306(C) establish limits to a trial court’s active jurisdiction on ‘the length of suspended sentences a court may impose[]’ first at the initial sentencing and then at sentencing following revocation, respectively.” *Cisneros v. Commonwealth*, 82 Va. App. 147, 165 (2024) (alteration in original) (quoting *Hannah*, 303 Va. at 124). To calculate the statutory maximum of a potential sentence, the court must consider “the cumulative total of all *potential* maximum sentences, running consecutively.” *Barrow v. Commonwealth*, 81 Va. App. 535, 549 (2024) (emphasis added). When the sentencing order conditions suspension on a fixed, “enforceable post-release restraint,” that fixed period must also not exceed that statutory maximum. *White v. Commonwealth*, No. 0280-24-2, slip op. at 21 (Va. Ct. App. July 14, 2026).⁵ We “measure the period of any suspension of sentence from the date of the entry of the original sentencing order.” Code § 19.2-306(C).

The statutory maximum period of incarceration that Davis could have received upon sentencing for his convictions was 5 years and 12 months. Code §§ 18.2-10(f), -11(a), -51, -56.1(A). However, the sentencing order imposed four years and six months of active incarceration on Davis paired with a ten-year suspension period conditioned on good behavior. This imposition of a ten-year period of suspension, conditioned on good behavior, was clearly in error to the extent that Davis’s sentence exceeded the period of suspension that Code § 19.2-303.1 authorizes. Therefore, Davis’s sentence “is good insofar as

⁵ “Although not binding precedent, unpublished opinions can be cited and considered for their persuasive value.” *Otey v. Commonwealth*, 61 Va. App. 346, 350 n.3 (2012) (citing Rule 5A:1(f)). In *White v. Commonwealth*, a panel of this Court held that a trial court must structure conditions of suspension (to include behavior conditions) such that the total period of the sentence does not exceed the statutory maximum. Slip op. at 25-26 (citing *Rawls v. Commonwealth*, 278 Va. 213, 221 (2009)).

the power of the court extends, and is invalid only as to the excess.” *Rawls v. Commonwealth*, 278 Va. 213, 218 (2009). That portion of his sentence which was “imposed in violation of a prescribed statutory range of punishment is void *ab initio* because ‘the character of the judgment was not such as the [C]ourt had the power to render.’” *Id.* at 221 (alteration in original) (quoting *Anthony v. Kasey*, 83 Va. 338, 340 (1887)).⁶ We may thus apply the ends of justice exception to reach his argument on appeal because “[d]enying [a defendant] his liberty [based on] a void sentence would impose a grave injustice upon him.” *Commonwealth v. Bass*, 292 Va. 19, 29 (2016) (quoting *Charles v. Commonwealth*, 270 Va. 14, 20 (2005)).

The trial court did not have the power to render a sentence which exceeded the statutory range of punishment, and so the good behavior condition on Davis’s suspended sentence is void *ab initio*. See *Rawls*, 278 Va. at 221. “When a sentence is void *ab initio*, the proper remedy is to remand for resentencing.” *White*, slip op. at 27 (citing *Rawls*, 278 Va. at 221); see also *Gordon v. Commonwealth*, 61 Va. App. 682, 688 (2013) (“[T]his Court has no authority to strike the excessive portion of appellant’s sentences[.]”).

CONCLUSION

Given that the sentencing order is void because it imposed a conditional period of suspension in excess of the statutory maximum, we vacate Davis’s sentence and remand for

⁶ The Commonwealth references *Cisneros v. Commonwealth* to argue that the Code § 19.2-306(C) violation below is merely voidable, and was therefore waived on appeal because it was not preserved. 82 Va. App. 147. In *Cisneros*, we declined to extend the rationale in *Rawls* to the revocation proceedings, which includes the resuspension of a sentence. The panel reasoned that a resuspension is not a new sentence but merely a continuation of the initial sentence. *Id.* at 167 (stating that “a resuspension is fundamentally distinct from the initial act of sentencing following a criminal conviction” because “[t]he penalty imposed for a probation violation is not a new sentence but [instead] . . . a continuation of the original sentence” (alterations in original) (quoting *Hannah*, 303 Va. at 121 n.5)). But this is not the issue before us on appeal, and *Cisneros* is therefore not controlling for purposes of our analysis.

resentencing within the statutory limits. Yet for the foregoing reasons, we affirm Davis's convictions for both unlawful wounding and reckless handling of a firearm.

Affirmed in part, vacated in part, and remanded.

Athey, J., concurring in part and dissenting in part.

I agree with the majority’s reasoning in affirming Davis’s convictions. I disagree, however, regarding the majority’s conclusions as to Davis’s sentence.

A. *Davis’s sentence is not void ab initio, but voidable.*

The majority concludes that the trial court’s order was void ab initio because its judgment was “of a character that the court lacked power to render.” *Hannah v. Commonwealth*, 303 Va. 106, 120 (2024) (quoting *Watson v. Commonwealth*, 297 Va. 347, 350 (2019)); see *Mast v. A.A.*, ___ Va. ___, ___ (Feb. 12, 2026) (holding that “the power-to-render doctrine” is “rarely applied” and has “indistinct conceptual boundaries”). But “[v]oidable judgments are more common and usually involve a court’s failure to comply with precedent or an applicable statute.” *Hannah*, 303 Va. at 120.⁷

Here, the weight of existing authority persuades me that the order was voidable, not void ab initio. The trial court made an error of law regarding the length of Davis’s period of good behavior and “fail[ed] to comply with . . . an applicable statute.” *Hannah*, 303 Va. at 120. And although the majority relies on this Court’s most recent unpublished decision in *White*, four other panels of this Court have reached different conclusions in similar unpublished decisions. See

⁷ In various procedural contexts, our Court has addressed whether sentences with erroneous periods of supervised or unsupervised probation are voidable or void ab initio. See *Cisneros v. Commonwealth*, 82 Va. App. 147, 163 (2024) (not void ab initio); *Terry v. Commonwealth*, 81 Va. App. 241, 254 (2024) (same); *Story v. Commonwealth*, No. 1794-23-4 (Va. Ct. App. Apr. 8, 2025) (same); *Cook v. Commonwealth*, No. 1071-24-2 (Va. Ct. App. Sep. 16, 2025) (same); *White v. Commonwealth*, No. 1307-24-4 (Va. Ct. App. July 1, 2025) (same); *Butler v. Commonwealth*, No. 2121-23-2 (Va. Ct. App. Apr. 29, 2025) (per curiam) (same); *White v. Commonwealth*, No. 0280-24-2 (Va. Ct. App. July 14, 2026) (void ab initio). The Supreme Court of Virginia has declined to answer this question directly. See *Hannah*, 303 Va. at 121 (declining to address whether a final order that violated Code § 19.2-306(C) was voidable or void ab initio); *Commonwealth v. Moncrea*, ___ Va. ___, ___ (Apr. 2, 2026) (same).

n.7. As such, the Virginia Supreme Court’s guidance in *Hannah* and the weight of authority from this Court persuades me that the order in this case is not void ab initio, but voidable.⁸

B. *The ends of justice exception to Rule 5A:18 does not apply.*

Having found that the order is voidable and not void ab initio, any challenge to it “must be preserved and brought before courts of appeal pursuant to our procedural Rules.” *Hannah*, 303 Va. at 120. As interpreted by Virginia case law, the term “ends of justice” does not mean merely an error, but an error that resulted in a “grave injustice.” *Commonwealth v. Bass*, 292 Va. 19, 27 (2016). “[A] defendant must affirmatively show that a miscarriage of justice has occurred, not that a miscarriage *might* have occurred.” *Redman v. Commonwealth*, 25 Va. App. 215, 221 (1997). This remedy is “narrow and is to be used sparingly.” *Pearce v. Commonwealth*, 53 Va. App. 113, 123 (2008).

Our Court agreed to address the applicability of the ends of justice exception in this context through en banc review, but ultimately dismissed that petition as “improvidently granted” and reinstated the unpublished panel decision. *Bland v. Commonwealth*, No. 2061-23-2, slip op. at 1 (Va. Ct. App. Apr. 7, 2026) (order). The panel’s majority opinion stated that

We do not suggest that routine sentencing errors or ordinary misapplications of Code § 19.2-306.1 would justify ends of justice relief. In essence, the ends of justice exception is a narrowly confined safeguard, invoked only for those extraordinary and egregious errors that would lead any objectively reasonable person to question the fundamental fairness of the judicial process. This Court exercises restraint and respects the finality of most sentencing decisions, addressing only those rare instances where a judge’s error is not merely a routine mistake, but a profound disregard of statutory limits.

⁸ The transcript and the final order both reflect that the trial court intended to impose ten years of good behavior. This differs from situations such as *Watts* where the trial court made comments during the *ore tenus* hearing that were not reflected in the ensuing written order and corrected those omissions via a nunc pro tunc order. *Commonwealth v. Watts*, No. 241105, slip op. at 1-2 (Va. Mar. 5, 2026) (order).

Bland v. Commonwealth, No. 2061-23-2, slip. op. at 16 (Va. Ct. App. Nov. 12, 2025). *Bland*'s reasoning shows that there will be instances where trial counsel's failure to timely and specifically object to a trial court's "routine mistake" will result in that mistake being waived, and instances where trial counsel's failure to object cannot be tolerated on appeal because it would "lead any objectively reasonable person to question the fundamental fairness of the judicial process." *Id.*; see *Jackson v. Commonwealth*, 86 Va. App. 722, 741 (2026). This case is the former, not the latter.

Our legal system recognizes numerous ways to correct factual errors yet requires the correction of legal errors be done primarily through direct appeal, relying upon advocates to make timely and specific arguments to the trial court who then rules on such objections. See *Creamer v. Commonwealth*, 64 Va. App. 185, 195 (2015) ("The purpose of th[e] contemporaneous objection requirement is to allow the trial court a fair opportunity to resolve the issue at trial."). Appellate courts are not to "sally forth each day looking for wrongs to right." *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. ___, ___ (2026) (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020)).

Here, Davis was sentenced to an erroneous period of good behavior. He may or may not 1) be subject to a period of good behavior beyond what was statutorily permitted, see Code § 19.2-304; 2) violate a term of his suspended sentence, see Code § 19.2-306; or 3) violate his good behavior conditions. This uncertainty demonstrates that Davis has not carried his burden to show that a miscarriage of justice *will* occur. See *Redman*, 25 Va. App. at 221. Thus, although the trial court erred, the narrowness of our procedural exceptions and the speculative nature of how Davis will be affected by the trial court's error restrains me from applying the ends of justice exception here. Therefore, I respectfully dissent.