

COURT OF APPEALS OF VIRGINIA

Record No. 1566-24-3

DOUGLAS HOPKINS, SOMETIMES KNOWN AS
DOUGLAS PETER HOPKINS
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Chaney, Callins and Bernhard

Argued by videoconference

Opinion Issued October 13, 2026

FROM THE CIRCUIT COURT OF THE CITY OF MARTINSVILLE
G. Carter Greer, Judge

Brett P. Blobaum, Senior Appellate Attorney (Virginia Indigent Defense Commission, on briefs),
for appellant.

Sheri H. Kelly, Assistant Attorney General (Jason S. Miyares,¹ Attorney General; Susan Hallie
Hovey-Murray, Assistant Attorney General, on brief), for appellee.

PUBLISHED OPINION BY
JUDGE DOMINIQUE A. CALLINS

Following his conviction for misdemeanor assault and battery, the trial court sentenced Douglas Hopkins to 12 months' incarceration, a \$500 fine, and "banned" him from the SaVida Health premises indefinitely. Hopkins appeals the sentence, asserting that the ban was not within the trial court's sentencing authority, making the sentencing order void ab initio. We hold that a sentence is void ab initio, even when it is below the statutory maximum, if it includes *additional* punishments outside of the prescribed statutory range. We agree that the trial court lacked the authority to impose the ban under Code § 18.2-11(a), and we vacate the court's sentence and remand for resentencing.

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

BACKGROUND

In January 2024, Hopkins went to SaVida Health “looking for help” and wanting to “get in[to] the program,” ostensibly because he understood they assisted with narcotic and alcohol abuse treatment.² An office administrator scheduled him for an appointment the next day. At the appointment, the office administrator gave Hopkins a urine specimen cup for a drug test and directed him to the restroom. Rather than enter the restroom, Hopkins stood in the lobby and began to urinate in the cup and on the floor. When the administrator told Hopkins he needed to use the restroom, Hopkins became irritated and cursed at her repeatedly. The administrator called her supervisor, who arrived in the lobby and also witnessed Hopkins urinating in the lobby. The staff members warned Hopkins they would call the police if he did not stop urinating in the lobby. Hopkins threw the cup of urine at the administrator, causing the urine to land on her. The administrator told Hopkins he was “no longer welcome at SaVida.”

Hopkins was ultimately convicted of assault and battery, a Class I misdemeanor, after a bench trial. At sentencing, the court stated that throwing urine at the administrator “was a disgusting act, in the same category as spitting on someone,” and that it was “a very dehumanizing and humiliating action.” The court sentenced Hopkins to 12 months’ incarceration, imposed a \$500 fine, and “banned [Hopkins] from SaVida Health premises indefinitely.” Hopkins appeals the trial court’s sentence.

ANALYSIS

Hopkins argues that the portion of the trial court order banning him from SaVida Health exceeds the punishment for misdemeanor assault and battery authorized under Code § 18.2-11(a), making the order void ab initio. Hopkins acknowledges that he did not preserve this issue for

² In his closing argument, Hopkins’s counsel suggested that Hopkins went to SaVida Health for help because they assist with both narcotic and alcohol abuse.

appeal. However, objections to void orders “need not be preserved in accordance with Rule 5A:18,” *Cisneros v. Commonwealth*, 82 Va. App. 147, 163 (2024), and “can be challenged for the first time on appeal,” *Terry v. Commonwealth*, 81 Va. App. 241, 250 (2024). The threshold issue before us concerns whether we are reviewing a void order.

Whether a judgment is void ab initio is a question of law, as is the construction of Code § 18.2-11, and we review both de novo. *See Hannah v. Commonwealth*, 303 Va. 106, 123 (2024); *Woodard v. Commonwealth*, 287 Va. 276, 280 (2014). Sentences are judgments of the court. *Carter v. Commonwealth*, 199 Va. 466, 469 (1957). Virginia recognizes a judgment as void ab initio where: “(1) [the judgment] was procured by fraud, (2) the court lacked subject matter jurisdiction, (3) the court lacked jurisdiction over the parties, (4) the judgment is of a character that the court lacked power to render [it], or (5) the court adopted an unlawful procedure.” *Hannah*, 303 Va. at 119-20 (first alteration in original) (quoting *Watson v. Commonwealth*, 297 Va. 347, 350 (2019)). Hopkins argues that, here, the trial court’s sentencing order was “of a character that the court lacked the power to render” because the sentence included an indefinite premises ban.

The power to set punishments for particular crimes is vested in the legislature and not the courts. *Podracky v. Commonwealth*, 52 Va. App. 130, 143 (2008). “As the General Assembly circumscribes our courts’ power to punish, once a court imposes the greatest sentence statutorily authorized, the court’s power is ‘exhausted,’ and it may punish no more.” *Hannah*, 303 Va. at 121 (quoting *Commonwealth v. Watson*, 297 Va. 355, 361 (2019)). So when a court imposes a sentence “in violation of a prescribed statutory range,” its judgment is void at the onset because the court lacked the “power to render” a judgment of that character. *Rawls v. Commonwealth*, 278 Va. 213, 221 (2009). A trial court “has no inherent authority to depart from the range of punishment legislatively prescribed.” *Hernandez v. Commonwealth*, 281 Va. 222, 225 (2011). And a

“sentence outside the range set by the legislature” renders the sentencing order void ab initio “at least to that extent.” *Jones v. Commonwealth*, 293 Va. 29, 49 (2017). Thus, a court’s sentencing discretion is confined *within* the bounds of the punishment range set by the legislature.

The trial court convicted Hopkins of assault and battery, a Class 1 misdemeanor. *See* Code § 18.2-57. Code § 18.2-11 provides that “[t]he authorized punishments for conviction of a misdemeanor are,” for a Class 1 misdemeanor, “confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.” In other words, punishment for a misdemeanor assault and battery may include jail, a fine, either or both—but certainly nothing more. Yet, the trial court sentenced Hopkins to the maximum jail sentence, a \$500 fine, *and* decreed an indefinite premises ban. The ban—decreed in the sentencing order upon conviction—restrains Hopkins’s liberty indefinitely by judicial command; it is punishment. No statute authorizes a trial court to impose such punishment, under such circumstances as presented here.³

The Commonwealth contends that Code § 18.2-11(a) is “silent” regarding a court’s authority to impose additional conditions, and further argues that a trial court has “inherent authority” to ban people from private property. Notably, regarding this proposition of authority, the Commonwealth cites none. Indeed, there is no such authority to be found. Our Supreme Court has previously stated that a “court has *no inherent authority* to depart from the range of punishment legislatively prescribed.” *Woodard*, 287 Va. at 280 (emphasis added) (quoting *Starrs v. Commonwealth*, 287 Va. 1, 9 (2014)). A court’s inherent authority ends with the adjudication of guilt, after which it may act only within the legislature’s prescribed limits. *Starrs*, 287 Va. at 12; *Woodard*, 287 Va. at 280.

³ Because the court did not suspend any part of Hopkins’s sentence, we do not interpret this ban from SaVida as an exercise of the court’s discretionary power otherwise permissible when imposing conditions for a suspended sentence and probation. *See* Code § 19.2-303 (“After conviction . . . the court may suspend imposition of sentence . . . *and in addition* may place the defendant on probation under such conditions as the court shall determine.” (emphasis added)).

Adopting the Commonwealth’s silence-as-permission interpretation of Code § 18.2-11(a) is an erroneous endeavor easily avoided. Instead, we presume that the legislature, by its silence, intended to limit the range of punishment available to a court at sentencing. *See Taylor v. Commonwealth*, 78 Va. App. 147, 153 (2023) (“[W]e must assume that ‘the legislature chose, with care, the words it used.’” (quoting *Eley v. Commonwealth*, 70 Va. App. 158, 163 (2019))). Moreover, “[w]hen the General Assembly has used specific language in one instance, but omits that language or uses different language when addressing a similar subject elsewhere in the Code, we must presume that the difference in the choice of language was intentional.” *Sarafin v. Commonwealth*, 288 Va. 320, 328 (2014) (quoting *Zinone v. Lee’s Crossing Homeowners Ass’n*, 282 Va. 330, 337 (2011)). For example, Code § 18.2-11 authorizes a sentencing court, “[f]or a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2,” to impose “the punishment set forth in subsection B of that section *in addition to any other penalty provided by law*.” Code § 18.2-11 (emphasis added). Thus, “it is evident that the General Assembly ‘knows how’ to include such language” authorizing additional punishments. *Morgan v. Commonwealth*, 301 Va. 476, 482 (2022) (quoting *Brown v. Commonwealth*, 284 Va. 538, 545 (2012)) (holding the omission of language in one statute “indicates that the General Assembly did not intend for the two statutes to mean the same thing”). Yet it did not extend such authority for conviction of misdemeanor assault and battery. Because we must presume this omission intentional, we hold that the trial court had no authority under Code § 18.2-11 to impose a ban.

Although the court did not impose on Hopkins the maximum fine possible under the statute, it exceeded its authority by imposing an *additional* punishment which deviated from the authorized range of permissible punishments. *Jones*, 293 Va. at 49. This deviation rendered the entire sentencing order void ab initio. *See Burrell v. Commonwealth*, 283 Va. 474, 480 (2012).

Because Code § 18.2-11 does not authorize any additional punishments, a punishment of a kind the statute does not name falls outside the prescribed range from the moment it is imposed, regardless of whether the authorized punishments imposed alongside it reach their maximums. The trial court thus lacked the power to impose a premises ban upon Hopkins as part of his sentence.

Because the sentencing order is void ab initio, Rule 5A:18 poses no bar to our review. When a sentencing order includes an “ultra vires provision . . . the *entire* sentencing order” is void ab initio. *Burrell*, 283 Va. at 480 (emphasis added); *see also Botkin v. Commonwealth*, 296 Va. 309, 317-18 (2018) (remanding for resentencing “[t]o avoid speculation as to how the [trial] court would have sentenced” if the court had interpreted the sentencing statute properly). This means that a sentence imposed in violation of a prescribed statutory range entitles a criminal defendant “to a new sentencing hearing.” *Rawls*, 278 Va. at 221; *see also Grafmuller v. Commonwealth*, 290 Va. 525, 529-30 (2015) (applying *Rawls* to sentences determined by a judge or jury). The rule guards against speculation about what the court would have done had it known the limits of its power; we will not conjecture whether the court would have imposed a \$500 fine, or the full 12 months, had it understood that it could not add the ban. Because the trial court lacked the power to render a misdemeanor sentence that included a premises ban, we vacate Hopkins’s sentence and remand the case to the trial court for resentencing pursuant to Code § 18.2-11(a). Hopkins’s conviction remains undisturbed.

CONCLUSION

Because the trial court imposed a premises ban in violation of the prescribed statutory range, we vacate the sentence imposed by the trial court and remand the case for resentencing.

Reversed and remanded.