

Case Law Summary: Alabama

This summary of Alabama appellate case law addresses five topics: availability of and general standards for appellate review, standards and allowable grounds for departure, constitutional requirements for proof of facts permitting upward departure (*Blakely v. Washington* issues), requirements for raising the minimum sentence *Alleyne v. United States*), and other important appellate sentencing decisions.¹

1. Availability of and General Standards for Appellate Review.

The Alabama sentencing standards went into effect on October 1, 2006. The initial standards were advisory,² and provided that “neither the departure [from the voluntary sentencing standards] nor the reason stated for departure shall be subject to appellate review.”³ Nevertheless, some appeals did occur, and the Alabama Supreme Court held that appellate review is available under the voluntary sentencing standards for the limited purpose of determining if the sentence falls within the permissible statutory range.⁴

The present sentencing standards, which consist of both voluntary sentencing standards for violent offenses and presumptive sentencing standards for non-violent offenses listed on the Drug and Property “A” Worksheets, went into effect on October 1, 2013.⁵ Under the presumptive sentencing standards, durational and dispositional departures are subject to appellate review under an abuse of discretion standard.⁶ It should be noted, however, that pure questions of criminal law are subject to a *de novo* standard of review.⁷

2. Standards and Allowable Grounds for Departure.

All Alabama sentencing standards were purely advisory prior to October 2013, so there is minimal case law from before 2013 related to grounds for departure.⁸ For nonviolent offenses under the current presumptive sentencing standards, the law states that “substantial and compelling reasons” must justify a departure sentence above or below the presumptive sentence recommendation.⁹ Departures can result in “dispositional or sentence range departures, or both, and shall be stated on the record by the court.” The current guidelines state that departures should be rare; they also list a series of mitigating and aggravating factors that may justify departure in certain cases.¹⁰

In the 2015 case *Hyde v. State*, the Court of Criminal Appeals noted that courts are given “significant discretion in arriving at sentencing decisions under the presumptive standards,” but that discretion is not without limits.¹¹ In both *Hyde* and another 2015 case, *Abro v. State*, the Court of Criminal Appeals reversed trial court decisions to impose prison sentences where non-prison dispositions were

¹ For more information on sentencing case law in this state, see 13B Wash. Prac., Crim. L. ch. 34-43 (2016 – 2019 ed.).

² 2003 Ala. Acts-354, p. 948, §5.

³ Ala. Code. § 12-25-35(c) (2019).

⁴ See, e.g., *State v. Jones*, 13 So. 3d 915, 919-20 (Ala. 2008); *State v. Crittenden*, 17 So. 3d 253, 259-60 (Ala. Crim. App. 2009); *Sistrunk v. State*, 109 So. 3d 205, 207 (Ala. Crim. App. 2012).

⁵ 2012 Ala. Acts-473, p. 1304, §1.

⁶ Ala. Code. § 12-25-34.2(c) (2019). Under Alabama law, “a trial court abuses its discretion only when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which it rationally could have based its decision.” *Hinkle v. State*, 2016 WL 4734709 (Ala. Crim. App., Sept. 9, 2016) (citing *McCain v. State*, 33 So. 3d 642, 647 (Ala. Crim. App. 2009)).

⁷ *Ex parte Walker*, 152 So. 3d 1247 (Ala. Crim. App. 2014).

⁸ *Ex parte State*, 13 So. 3d 915, 920 (2008) (stating the old rule that in any cases where the trial court imposed a sentence that departed from the voluntary standards but fell within existing law, the court could have provided a written explanation for their decision but ultimately it could not be appealed).

⁹ Ala. Code § 12-25-34.2(a)(1), (5) (2019).

¹⁰ Ala. Sentencing Comm’n, *Presumptive and Voluntary Sentencing Standards* 28-30 (eff. Oct. 1, 2016), http://sentencingcommission.alacourt.gov/SentStandards/PresumptiveManual_2016.pdf.

¹¹ *Hyde v. State*, 185 So. 3d 501, 512 (Ala. Crim. App. 2015).

Case Law Summary: Alabama

recommended under the guidelines.¹² However, in 2016, after reviewing a lower court's decision, the Court of Criminal Appeals upheld an aggravated departure from the presumptive guidelines that resulted in a 137 year consecutive sentence for 17 counts of first-degree theft and 3 counts of second-degree theft.¹³

Alabama's rule that departures from the sentencing standards should be rare¹⁴ is meant to protect defendants from judicial abuse of power. In *Hall v. State*, the Alabama Criminal Appeals Court used an "abuse-of-discretion" standard of review to determine if the circuit court abused the "departures should be rare" rule. It stated that a trial court abuses its discretion only if the court based its decision on an erroneous conclusion of law or if there was no rational basis for its decision.¹⁵ This standard was also used in *Hyde v. State* to find that the circuit court did not follow the requirements set forth in the sentencing manual when it erroneously shifted the burden of proof onto the defendant by asking her to prove why she should receive probation over prison despite the guidelines recommending a non-prison dispositional sentence.¹⁶

3. Constitutional Requirements for Proof of Facts that Permit Upward Departure Under *Blakely v. Washington*

The purely advisory Alabama sentencing standards in force prior to October 2013 likely did not implicate *Blakely* issues because judges did not have to justify upward departures.¹⁷ However, under *Blakely*, Alabama's current presumptive sentencing standards are subject to the jury trial requirements of the Sixth Amendment. Thus, a jury must find a defendant guilty beyond a reasonable doubt on any facts used to exceed the maximum punishment authorized by the sentencing standards.¹⁸

It appears that the current presumptive sentencing standards align with *Blakely* by stating that "the prosecutor bears the burden of proving beyond a reasonable doubt that an aggravating factor exists. The defendant is entitled to a jury trial on the existence of any aggravating factor, unless the aggravating factor is admitted by the defendant or both the defendant and the prosecutor waive a jury determination and request the judge alone to decide."¹⁹

4. Constitutional Requirements for Proof of Facts that Increase Minimum Sentencing Under *Alleyne v. United States*

Thus far, the Alabama Courts have primarily applied *Alleyne* only in the context of mandatory minimum sentences,²⁰ and there have been no challenges to the provisions of the sentencing standards that increase the minimum sentence, such as the requirement on the drug and property sentence length worksheets to add points for possession or use of a deadly weapon. However, one case indicates that these provisions may be at risk for challenge. In *Hall v. State*, the Alabama Criminal Appeals Court

¹² *Id.*, *Abro v. State*, 216 So. 3d 462 (Ala. Crim. App. 2015).

¹³ *Hinkle v. State*, 2016 WL 4734709 (Ala. Crim. App. Sept. 9, 2016). *But see Showers v. State*, 2019 WL 3446534 (Ala. Crim. App. Aug. 11, 2019) in which the Court of Criminal Appeals reversed a lengthy sentence that did not comport with guidelines rules about cases sentenced in one sentencing event and did not follow the rules for upward departure.

¹⁴ Ala. Sentencing Comm'n, *Presumptive and Voluntary Sentencing Standards* 28 (eff. Oct. 1, 2016) (stating that "departure sentences should be rare, with the court following the presumptive recommendation in the vast majority of sentenced cases.").

¹⁵ *Hall v. State*, 266 So. 3d 759, 769 (Ala. Crim. App. 2016) (citing *McCain v. State*, 33 So. 3d 642, 647 (Ala. Crim. App. 2009)).

¹⁶ *Hyde v. State*, 185 So. 3d 501 (Ala. Crim. App. 2015).

¹⁷ *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

¹⁸ *Id.*

¹⁹ Presumptive and Voluntary Sentencing Standards, *supra* note 9, at 28–29.

²⁰ See *Lightfoot v. State*, 152 So. 3d 445 (Ala. S.Ct. 2013).

Case Law Summary: Alabama

UNIVERSITY OF MINNESOTA LAW SCHOOL | 229 19TH AVE SOUTH | 472 MONDALE HALL | MINNEAPOLIS, MN 55455 | ROBINA@UMN.EDU | ROBINA.INSTITUTE.UMN.EDU

limited the reach of *Alleyne* by stating that sentencing enhancements were not necessary elements of the conviction for which Hall was sentenced and therefore did not need to be presented to a jury.²¹ The defendant-appellant in *Hall* was convicted of unlawful distribution of cocaine and received an enhanced sentence because of the crime's proximity to an educational institution. Hall argued that in light of *Alleyne*, the basis for the departure was a necessary element that needed to be presented to a jury.²² The court upheld the appellant's sentence by reasoning that the aggravating factor of being close to a school was not a necessary element to the offense and therefore did not need to be presented to a jury.²³ Interestingly, the court noted that the sentencing enhancements at issue were also not "worksheet scoring factors,"²⁴ indicating that other factual items on the worksheet (i.e., possession or use of a deadly weapon) could potentially be subject to the requirements of *Alleyne*.

5. Other Important Sentencing Decisions

In *Clark v. State*, the Alabama Court of Criminal Appeals examined the presumptive guidelines for the first time. The defendant was arrested for unlawful distribution of a controlled substance (cocaine), a Drug Worksheet offense, in December of 2011, but was not sentenced until October 11, 2013. The trial court sentenced the defendant under the Alabama Habitual Offender Statute rather than the Guidelines reasoning the presumptive Guidelines did not apply to Drug or Property "A" offenses committed before October 1, 2013. The Alabama Court of Criminal Appeals reversed the district court because although the law did not state that the presumptive sentencing standards were to be applied retroactively, the report of the sentencing commission proposing the modifications necessary to establish presumptive sentencing standards explained that the modifications would apply to all persons sentenced on or after October 1, 2014. Because the Alabama Legislature did not reject the October 1, 2013 start date, the sentencing standards were determined to be binding even for offenses committed before their effective date.²⁵

Some misdemeanor crimes committed while under supervision can result in incarceration even if the original felony crime that led to supervision had a non-prison disposition.²⁶ The defendant in *State v. Duncan* was originally charged with misdemeanor marijuana possession and a Class D felony possession of controlled substances, which carried a presumptive non-prison sentence.²⁷ The Circuit Court sentenced the defendant to twelve months in jail after he failed to comply with his court-ordered drug treatment program. The defendant argued that the presumptive sentence for his most serious offense mandated no jail time, but the court reasoned that there was no such presumption about the misdemeanor charge.²⁸ *Duncan* indicates a loophole within the presumptive sentencing standards in which misdemeanor crimes, though less serious offenses, are not subject to presumptive non-incarceration sentencing guidelines like felonies.

The 2012 case *Sistrunk v. State*, the Alabama Criminal Appeals Court ruled that it was an abuse of discretion for a sentencing court to use both the Habitual Felony Offender Act (HFOA) and the statutory sentencing standards when crafting a sentence.²⁹ Appeals found that pursuant to Alabama code, trial judges have discretion to sentence offenders pursuant to either HFOA or the sentencing standards.³⁰ Hybrid sentences that use both are not lawful.

²¹ *Hall v. State*, 266 So. 3d 759 (Ala. Crim. App. 2016).

²² *Id.* at 769–772.

²³ *Id.*

²⁴ *Id.* at 772.

²⁵ *Clark v. State*, 166 So. 3d 147 (Ala. Crim. App. 2014).

²⁶ Ala. Code § 13A-5-8.1 (2019).

²⁷ *Ex parte State*, 2018 WL 4174734 (Ala. 2018) (reversing *Duncan v. State*, 2017 WL 6398241 (Ala. Crim. App. 2017)).

²⁸ *Id.* at 2–3.

²⁹ *Sistrunk v. State*, 109 So. 3d 205 (Ala. Crim. App. 2012).

³⁰ *Id.* at 207–208 (citing Code of Ala § 12-25-31(a)(1)).