VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 9th day of April, 2020.

PRESENT: Goodwyn, Mims, Powell, Kelsey, McCullough, and Chafin, JJ., and Koontz, S.J.

Frank Arthur, Appellant,

against Record No. 190186
Court of Appeals No. 0163-18-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is reversible error in the judgment of the Court of Appeals.

Frank Arthur ("Arthur") pled guilty to manufacturing methamphetamine and possession of precursors with intent to manufacture methamphetamine, both in violation of Code § 18.2-248. The trial court entered two sentencing orders – one sentencing Arthur to twenty years' imprisonment with eleven years suspended for the manufacturing conviction and the other sentencing him to ten years' imprisonment, all suspended, for the possession of methamphetamine precursors conviction.

Code § 18.2-248(J) states that "any person who possesses any two or more different substances . . . with the intent to manufacture methamphetamine . . . is guilty of a Class 6 felony." Because it is a Class 6 felony, a conviction for possession of methamphetamine precursors may be punished by "a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both." Code § 18.2-10(f). Arthur was sentenced to ten years' imprisonment, all suspended, for his possession of precursors conviction, exceeding the five-year statutory maximum.

> There is no inherent judicial power to fix terms of imprisonment. *See Hernandez v. Commonwealth*, 281 Va. 222, 225 (2011) (explaining that a Virginia trial court "has no inherent authority to depart from the range of punishment legislatively

> prescribed"). Thus, when a trial court imposes a sentence outside the range set by the legislature, the court's sentencing order – at least to that extent – is void ab initio because the court has no jurisdiction to do so.

Jones v. Commonwealth, 293 Va. 29, 49 (2017). In *Rawls v. Commonwealth*, 278 Va. 213 (2009), this Court explained that "a criminal defendant in that situation is entitled to a new sentencing hearing," thereby "eliminat[ing] the need for courts to resort to speculation when determining how a jury would have sentenced a criminal defendant had the jury been properly instructed or had the jury properly followed correct instructions." *Id.* at 221. This rule is equally applicable in bench trials where the sentence imposed exceeds the statutory limitations. *See Grafmuller v. Commonwealth*, 290 Va. 525, 529-30 (2015). Because the circuit court imposed a sentence for Arthur's possession of methamphetamine precursors conviction in excess of the statutorily-prescribed maximum sentence, the sentence is void ab initio. Arthur's sentence for the manufacturing of methamphetamine conviction remains valid, however. *See Graves v. Commonwealth*, 294 Va. 196, 208 n.6 (2017) (when multiple sentences are contained in a sentencing order and only one sentence is deemed void ab initio, the remainder of the sentences continue to be valid).

The judgment below is reversed as far as it imposes a sentence that exceeds the punishment authorized in Code § 18.2-10(f). The ten-year suspended sentence is vacated, and the case is remanded to the Court of Appeals with instructions to remand the same to the Circuit Court of the City of Suffolk for resentencing consistent with this Court's order.

This order shall be certified to the Court of Appeals and the Circuit Court of the City of Suffolk.

A Copy,

Teste:

Clerk