

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 31st day of January, 2019.

Present: All the Justices

Ryricka Nikita Custis, Appellant,

against Record No. 171103
Circuit Court No. 07CR273

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Accomack County.

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

On March 10, 2008, Ryricka Nikita Custis (“Custis”) was convicted of robbery in violation of Code § 18.2-58, use of a firearm in the commission of a felony in violation of Code § 18.2-53.1, and possession of a firearm by a felon in violation of Code § 18.2-308.2. Custis was sentenced to forty years incarceration: thirty years for robbery, five years for use of a firearm in the commission of a felony, and five years for possession of a firearm by a felon.

On February 9, 2017, Custis filed a hand-written motion titled “Motion to Vacate a Void Judgment” in the circuit court. In his motion, Custis argued that the July 10, 2008 sentencing order was void with regard to his sentence for use of a firearm in the commission of a felony because he was sentenced to a term of five years and the maximum sentence he could

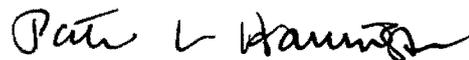
receive was three years. On February 23, 2017, the circuit court denied his motion. Custis timely noted his appeal.

“[A] sentence 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.’” *Rawls v. Commonwealth*, 278 Va. 213, 221 (2009) (quoting *Anthony v. Kasey*, 83 Va. 338, 340 (1887)). The mandatory minimum and maximum sentence that may be imposed for the first conviction under Code § 18.2-53.1 is a three-year term of confinement. *Graves v. Commonwealth*, 294 Va. 196, 208 (2017). As Custis’s five-year sentence for the violation of Code § 18.2-53.1 exceeds the sentence that may be imposed, it is void ab initio. Accordingly, the judgment of the circuit court denying Custis’s motion to vacate is reversed, the five-year sentence for use of a firearm in the commission of a felony in violation of Code § 18.2-53.1 is vacated, and the case is remanded to the circuit court for entry of a new sentencing order imposing a three-year term of confinement for the use of a firearm in the commission of a felony conviction.¹ *See Graves*, 294 Va. at 208.

This order shall be certified to the Circuit Court of Accomack County.

A Copy,

Teste:



Clerk

¹ Custis also argues that he should be resentenced for his other convictions. He acknowledges that this argument was raised for the first time on appeal and requests that the Court apply the ends of justice exception to Rule 5:25. The ends of justice exception is inapplicable in the present case as the granted assignment of error was limited to Custis’s sentence under Code § 18.2-53.1 and made no mention of his other sentences. As this argument falls outside of the assignment of error granted by the Court, it is not properly before the Court. *See* Rule 5:17(c).