# Court of Appeals
# of the State of Georgia

ATLANTA, June 20, 2018

*The Court of Appeals hereby passes the following order:*

**A18A1817. ROBERT ANTHONY SMITH v. THE STATE.**

In 2008, a jury convicted Robert Anthony Smith of two counts of burglary. We affirmed Smith's conviction on direct appeal. See *Smith v. State*, Case No. A10A1662 (decided March 23, 2011). In 2017, Smith filed a series of motions to correct a void and illegal sentence. The trial court denied his motions. Smith appealed to the Supreme Court, and the Supreme Court transferred the case to this Court. See Case No. S18A0962 (decided April 16, 2018). We, however, lack jurisdiction.

A direct appeal may lie from an order denying a motion to vacate or correct a void sentence only if the defendant raises a colorable claim that the sentence is, in fact, void. See *Harper v. State*, 286 Ga. 216, 217, n. 1 (686 SE2d 786) (2009); *Burg v. State*, 297 Ga. App. 118, 119 (676 SE2d 465) (2009). "Motions to vacate a void sentence generally are limited to claims that – even assuming the existence and validity of the conviction for which the sentence was imposed – the law does not authorize that sentence, most typically because it exceeds the most severe punishment for which the applicable penal statute provides." *von Thomas v. State*, 293 Ga. 569, 572 (2) (748 SE2d 446) (2013). When a sentence is within the statutory range of punishment, it is not void. *Jones v. State*, 278 Ga. 669, 670 (604 SE2d 483) (2004).

Here, Smith does not argue that his sentence falls outside the permissible statutory range, but instead challenges the procedure used to sentence him as a recidivist. Assertions taking issue with the procedure employed in imposing the sentence do not constitute colorable void-sentence claims. *Coleman v. State*, 305 Ga. App. 680, 680-681 (700 SE2d 668) (2010). See also *von Thomas*, 293 Ga. at 572;

*Ward v. State*, 299 Ga. App. 63, 64-65 (682 SE2d 128) (2009). Accordingly, because Smith does not raise a valid void-sentence claim, this appeal is hereby DISMISSED for lack of jurisdiction. Smith's motion for sanctions is DENIED.

*Court of Appeals of the State of Georgia*
*Clerk's Office, Atlanta,* 06/20/2018
*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*
*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

Stephen E. Castlen , *Clerk.*