

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-446

BRAD ERIC CRAWFORD
APPELLANT

December 5, 2007
AN APPEAL FROM MISSISSIPPI
COUNTY CIRCUIT COURT
[CR2005-233; CR1999-399]

V.

HON. RALPH EDWIN WILSON, JR.,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Brad Crawford appeals from the revocation of his suspended sentence, arguing that the trial court lacked jurisdiction to revoke his suspended sentence because his period of suspension had not begun. We hold that there was no error because appellant's period of suspension began when he was paroled and because his sentence was revoked before the period of suspension expired. Accordingly, we affirm the trial court's order.

I. Facts

On October 11, 2000, appellant pled guilty to six counts of delivery of cocaine. He was sentenced to serve ten-and-one-half years in the Arkansas Department of Correction on each charge, with the sentences to run concurrently. Additionally, a ten-year suspended sentence was imposed on each count to follow appellant's prison term.

Although the date is not clear from the record, appellant was freed on parole and began serving the suspended portions of his sentences. On August 24, 2005, while on parole and while under the terms of his suspended sentences, appellant was charged with the first-degree murder and first-degree battery of Tommy Watson, Jr., which occurred on June 23,

2005. Also on August 24, 2005, the State filed a motion to revoke the suspended portion of appellant's sentences for cocaine delivery.

The murder charge and revocation charge were tried concurrently. A jury convicted appellant of first-degree murder, and he was ordered to serve fifty-nine years in prison on that charge. Based on the evidence presented at the murder trial, the trial court immediately thereafter revoked appellant's suspended sentence due to his violation of state law. The court sentenced appellant to serve eight years in prison on each of the six possession counts, totaling forty-eight years, to run concurrently with the sentence imposed for murder.

II. Jurisdiction to Revoke Suspended Sentence

Appellant's sole argument is that the trial court lacked jurisdiction to revoke his suspended sentence because his period of suspension would not commence until the date his prison sentence would have ended had he not been released on parole.¹ We disagree, and affirm the revocation of appellant's suspended sentence.

Appellant's single citation to authority is *Harness v. State*, 352 Ark. 335, 101 S.W.3d 235 (2003). However, *Harness* is inapposite to the facts of the instant case. Like appellant, the *Harness* defendant was sentenced to serve a term of imprisonment to be followed by a suspended sentence. Due to overcrowding, *Harness* was not immediately imprisoned. When he was finally ordered to surrender, he did not show. He was subsequently apprehended in another state and was returned to Arkansas. The trial court thereafter revoked *Harness*'s suspended sentence. The *Harness* court determined that the trial court lacked the power to revoke the suspended portion of *Harness*'s sentence prior to the commencement of his period of suspension. *See also Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005).

¹Appellant erroneously asserts that his period of suspension would begin in 2020. Appellant was sentenced in October 2000 to serve ten-and-one-half years in prison. If he had served the full sentence, he would have been released in 2011 and his period of suspension would have commenced upon release.

By contrast, here there is no doubt that appellant's period of suspension began when he was paroled. *See* Ark. Code Ann. § 16-93-101(1) (Repl. 2006) (defining "parole" as the release of the prisoner into the community by the Parole Board prior to the expiration of his prison term). If a court sentences a defendant to a term of imprisonment and suspends the imposition of sentence as to an additional term of imprisonment, the period of suspension commences on the day the defendant is lawfully set at liberty from imprisonment. *See* Ark. Code Ann. § 5-4-307(c) (Repl. 2006); *Vann v. State*, 16 Ark. App. 199, 698 S.W.2d 814 (1985) (stating that the defendant's five-year suspended period of imprisonment commenced to run on the date on which the defendant was paroled from penitentiary). Thus, appellant's period of suspension began when he was released on parole, even though he remained a parolee under the supervision of the Arkansas Department of Correction. *See, e.g., Billings v. State*, 53 Ark. App. 219, 921 S.W.2d 607 (1996) (affirming the revocation of the defendant's parole and suspended sentence relating to the same offenses).

Finally, the trial court's revocation was valid because it occurred before the ten-year period of suspension expired. *See* Ark. Code Ann. § 5-4-309(d) (Repl. 2006). As the State notes, even if appellant's period of suspension began on October 11, 2000, the same day the original judgment was entered against him, the judgment based on the revocation was entered on October 4, 2006, well before the ten-year period of suspension expired.²

Affirmed.

HART and GLADWIN, JJ., agree.

²We note that the judgment and conviction order that was entered following revocation indicates that appellant was on *probation* when the offenses warranting revocation were committed. We further note that the judgment and conviction order for the murder conviction indicates that appellant was on parole and probation when the murder was committed. However, the parties agree that appellant was on *parole* when the offenses were committed, and it is clear that appellant was not on probation at that time because he had served a term of imprisonment. *See* Ark. Code Ann. § 16-93-101(2) (Repl. 2006) (defining probation).

