

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

YOANE A. MOOTHERY,
Appellant.

No. 2 CA-CR 2023-0237
Filed April 8, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201700325
The Honorable Daniel A. Washburn, Judge

APPEAL DISMISSED

COUNSEL

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Judge Sklar and Judge O'Neil concurred.

STARING, Vice Chief Judge:

¶1 Yoane Moothery appeals from the superior court's denial of his motion for additional pre-incarceration credit. For the following reasons, we dismiss for lack of jurisdiction.

Factual and Procedural Background

¶2 In February 2017, Moothery was indicted in Pinal County on several felony charges. He pled guilty, and the superior court sentenced him to a total of three years in prison followed by three years of supervised probation. Moothery was released from prison in October 2019 and began his term of supervised probation.

¶3 In January 2020, the state filed a petition to revoke Moothery's probation, alleging he had committed multiple domestic violence offenses earlier that month. The petition was subsequently dismissed at the state's request. In April, the state filed another petition for revocation based on allegations that Moothery had recently possessed a weapon and resisted arrest. At the state's request, the superior court again dismissed the revocation petition.

¶4 In September 2022, Moothery pled guilty to theft of a means of transportation in Maricopa County. In October, the state again filed a petition to revoke Moothery's probation in Pinal County based on his Maricopa County conviction. At a hearing later that month, the superior court found an automatic violation of the terms and conditions of Moothery's probation based on the Maricopa County conviction, noting he had "knowingly, intelligently and voluntarily admitted to the violation of probation" and the "determination of guilt was based upon an admission." As such, the court revoked his probation and sentenced him to five years in prison with twenty-three days of pre-incarceration credit. The court granted Moothery's motion "for leave to file a request" for reconsideration as to the amount of pre-incarceration credit he was entitled to receive, ordering that any such request be filed by November 14, 2022.

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¶5 In March 2023, Moothery moved to amend the sentencing order and “account for additional time served credit from preincarceration.” The superior court noted Moothery’s motion was untimely but nevertheless proceeded to address his arguments, ultimately denying the motion. This appeal followed.

Discussion

¶6 On appeal, Moothery asserts the state violated his due process rights “by filing a petition to revoke after an unreasonable delay.” He argues the state “was aware of [his] new charge[] in Maricopa County and followed along with his court dates, whereabouts, and disposition of the matter[] over a month prior to filing a petition to revoke” and intentionally waited to file the petition until after he had been sentenced for that offense. Accordingly, he asks us to vacate the superior court’s revocation of his probation and imposition of the related sentence. Alternatively, Moothery “requests to be re-sentenced . . . to receive 420 days credit for time served, the amount of credits [he] would [have] received had Pinal County filed a petition to revoke when [it] became aware of the probation violations” in October 2020.

¶7 Moothery contends we have jurisdiction over his appeal pursuant to A.R.S. §§ 13-4031 and 13-4033(A)(3), (4), asserting a “probationer who seeks to have his revocation of probation and sentence reviewed can accomplish such review by filing a timely appeal to the appropriate appellate court pursuant to Rule 31.” The state responds that neither subsection (3) nor (4) of § 13-4033 is applicable here and that therefore we lack appellate jurisdiction to address Moothery’s arguments.

¶8 This court is “a court of limited jurisdiction and has only jurisdiction specifically given to it by statute.” *State v. Eby*, 226 Ariz. 179, ¶ 3 (App. 2011) (quoting *Campbell v. Arnold*, 121 Ariz. 370, 371 (1979)). Whether or not jurisdiction is challenged, we must always confirm we have jurisdiction over an appeal. *State v. Kalauli*, 243 Ariz. 521, ¶ 4 (App. 2018).

¶9 “The Arizona Constitution guarantees defendants in criminal prosecutions ‘the right to appeal in all cases.’” *Hoffman v. Chandler*, 231 Ariz. 362, ¶ 5 (2013) (quoting Ariz. Const. art. II, § 24). Generally, we have “[a]ppellate jurisdiction in all actions and proceedings originating in or permitted by law to be appealed from the superior court, except criminal actions involving crimes for which a sentence of death has actually been imposed.” A.R.S. § 12-120.21(A)(1). However, a defendant in a noncapital case is not permitted to “appeal from a judgment or sentence that is entered

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pursuant to a plea agreement or an admission to a probation violation.”
§ 13-4033(B).

¶10 Because Moothery pled guilty to theft of a means of transportation in Maricopa County while on probation in Pinal County, thereby automatically violating the terms of his probation, he may not challenge the revocation of his probation or the resulting sentence on direct appeal. *See id.*; *State v. Regenold*, 226 Ariz. 378, ¶¶ 5-6 (2011); *see also* Ariz. R. Crim. P. 33.1 (defendant with “an automatic probation violation based on a plea of guilty or no contest” may challenge sentence in petition for post-conviction relief). As such, we lack jurisdiction to address his arguments.

Disposition

¶11 For the foregoing reasons, we dismiss Moothery’s appeal for lack of jurisdiction.