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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-23-60

ALTON YOUNG

APPELLANTS

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 27, 2023

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT, WESTERN
DISTRICT
[NO. 16]CR-20-1330]

HONORABLE CHRIS THYER,
JUDGE

AFFIRMED; REMANDED TO
CORRECT SENTENCING
ORDER

KENNETH S. HIXSON, Judge

This is a revocation case. On January 7, 2021, the trial court entered a sentencing order sentencing appellant Alton Young as a habitual offender to four years in prison followed by a five-year suspended imposition of sentence pursuant to Young's negotiated plea of guilty to felony failure to appear. The conditions of Young's suspension required that he not commit a criminal offense punishable by imprisonment.

On June 21, 2022, the State filed a petition to revoke Young's suspended sentence, alleging that he violated the conditions of his suspension by committing possession of cocaine and theft of property on May 26, 2022. After a hearing held on October 4, 2022, the trial court found that Young violated the conditions of his suspension by committing

both of these offenses. On the same day, the trial court entered an order revoking Young's suspended sentence and sentencing him as a habitual offender to six years in prison followed by a five-year suspended imposition of sentence.

Young now appeals from the revocation and resulting sentence. Young's sole argument on appeal is that there was insufficient evidence to support the revocation. We affirm.

Pursuant to Arkansas Code Annotated section 16-93-308(d) (Supp. 2023), the burden on the State in a revocation proceeding is to prove by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of his suspension or probation. The State needed to prove only one violation to sustain the revocation. *Palmer v. State*, 2023 Ark. App. 178, 663 S.W.3d 436. We will not reverse a decision revoking a suspension or probation unless the trial court's findings are clearly against the preponderance of the evidence, and we defer to the credibility determinations made by the trial court. *Id.* Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002).

Officer Greg Trout of the Jonesboro Police Department testified at the revocation hearing. Officer Trout testified that on June 26, 2022, at about 11:10 a.m., he received a call in reference to a theft of tools at O'Reilly Auto Parts. The caller stated that an older black man wearing a white shirt with gold on it had just taken items from the store.¹

¹Young is a sixty-two-year-old black man.

Officer Trout stated that he was “pretty well in the area” when he received the call and that as he approached, he saw an older black male wearing the described clothing walking across a parking lot toward Dollar General, which is right next to O’Reilly’s. This man was Young, and Officer Trout parked his patrol car and followed Young into Dollar General. Officer Trout stated that although the man “did fully match the description” he only saw him from the back when he was walking into the store. Once inside the store, Officer Trout observed Young leaving one of the aisles, and he made contact with Young and asked to speak with him outside.

Officer Trout told Young that he was there to speak to him about a theft at O’Reilly’s, and Young denied taking anything from O’Reilly’s. After learning through dispatch that Young was on parole with a search waiver on file, Officer Trout conducted a search. During the search of Young’s person and backpack, Officer Trout did not find any items from O’Reilly’s. Officer Trout, however, testified that he found a rolled-up piece of paper inside the brim of Young’s hat that contained approximately 0.25 grams of crack cocaine.² At that time, Officer Trout arrested Young for drug possession.

After Young was taken into custody, Officer Trout went back inside Dollar General to the aisle where he had encountered Young. In that aisle, Officer Trout found the described tool set that had been taken from O’Reilly’s. Officer Trout stated that “it was like a 12-piece ratchet set” that was “maybe three inches wide and maybe nine inches tall.”

²Although Officer Trout testified that this substance was taken to the crime lab, no test results were introduced into evidence.

According to Officer Trout, an O'Reilly's associate confirmed that this was their tool set. Officer Trout stated that it was about fifteen minutes between when he first observed Young walking out of the aisle and when he returned to the aisle and discovered the tool set, and he stated that he had observed no other persons in that aisle.

Based on Officer Trout's testimony, the trial court found that Young violated the conditions of his suspended sentence by committing possession of cocaine and theft of property. Young now appeals.

On appeal, Young argues that there was insufficient evidence to support either of these violations. With respect to possession of cocaine, Young alleges that although Officer Trout testified that Young possessed crack cocaine, this testimony was insufficient to support the revocation in the absence of any expert chemical analysis to confirm the identity of the substance. Young also argues that there was insufficient evidence that he committed theft of property because there was no video of the alleged theft, and the State failed to prove that he possessed the allegedly stolen property.

The State need only prove one violation to sustain the revocation. *Palmer, supra*. We conclude that the State provided sufficient proof that Young committed theft of property, which is committed when a person exercises unauthorized control of any interest in another person's property with the purpose of depriving the owner of the property. *See* Ark. Code Ann. § 5-36-103(a)(1) (Supp. 2023).

The testimony showed that Officer Trout was in the vicinity of O'Reilly's when he received a report that a theft had occurred there. Shortly thereafter, Officer Trout observed

Young—who matched the description of the thief—walking in a parking lot toward Dollar General, which is adjacent to O’Reilly’s. After developing Young as a suspect and following him into Dollar General, Officer Trout observed Young leaving one of the aisles in the store. After removing Young from the store and ultimately placing him in custody, Officer Trout reentered Dollar General and discovered a tool set—which was later confirmed to be stolen from O’Reilly’s—in the aisle where Young had been. Officer Trout had seen no other persons in that aisle during the episode.

Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a revocation. *Bradley, supra*. In a revocation case, we take into account that the State must prove its case by only a preponderance of the evidence—more likely than not that the crime occurred. *Turner v. State*, 2017 Ark. App. 682, 537 S.W.3d 299. Further, the supreme court has held that circumstantial evidence may be sufficient to support a revocation. *See Lemons v. State*, 310 Ark. 381, 836 S.W.2d 861 (1992).

With these considerations in mind and on the basis of the evidence presented as set forth above, we hold that the trial court’s decision to revoke Young’s suspended sentence based on its finding that Young committed theft of property was not clearly against the preponderance of the evidence.³ Accordingly, we affirm the revocation.

Although we affirm Young’s revocation, we observe that the sentencing order contains the requirement that Young must complete drug-rehabilitation classes while

³In light of our holding, it is unnecessary to address the trial court’s additional finding that Young possessed cocaine.

incarcerated. In *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909, the Arkansas Supreme Court held that there is no statute authorizing drug-or-alcohol treatment as a condition of incarceration, making any sentence containing such a condition illegal on its face. *Holmes-Childers v. State*, 2016 Ark. App. 464, 504 S.W.3d 645. Once the trial court enters a judgment and sentence of incarceration, jurisdiction transfers to the Arkansas Department of Correction, a part of the executive branch of government, to determine any conditions of that incarceration. *Richie, supra*. We may address an illegal sentence sua sponte because void or illegal sentences are matters of subject-matter jurisdiction, and we review them even if they are not raised on appeal. *Willingham v. State*, 2021 Ark. 177, 631 S.W.3d 558. We therefore remand for the trial court to correct the error described above and enter an amended sentencing order removing the requirement that Young complete drug rehabilitation while incarcerated.

Finally, we also remand the case to the trial court to correct a clerical error. Although the order being appealed states that Young entered a negotiated plea of guilty, Young was found guilty by the trial court at the revocation hearing and was sentenced by the court. Therefore, we remand for the trial court to make this correction in the amended sentencing order as well. See *Newton v. State*, 2016 Ark. App. 1.

Affirmed; remanded to correct sentencing order.

ABRAMSON and VIRDEN, JJ., agree.

Terry Goodwin Jones, for appellant.

Tim Griffin, Att’y Gen., by: Adam Jackson, Ass’t Att’y Gen., for appellee.