

Cite as 2023 Ark. App. 376

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-23-97

MINOR CHILD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 13, 2023

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[NO. 40JV-22-37]

HONORABLE EARNEST E.
BROWN, JR., JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

This is an appeal from the wrong court. Minor Child (MC) was sentenced by the Lincoln County Circuit Court to serve two years' probation in Pope County, her home ground. The Lincoln County sentence relates to delinquency charges filed against MC—two Class D felony counts of aggravated assault on a law enforcement officer and one Class A misdemeanor count of impairing the operation of a vital public facility. The felony counts arose from MC's conduct while in the Lincoln County jail. MC found herself in the Lincoln County jail when she was picked up in Star City by the police because she had run away from her home (in Pope County) while wearing an ankle monitor. MC was wearing an ankle monitor because she was on probation in Pope County for violence against her grandmother. Lincoln County authorities found MC in Star City inside a vehicle with other people.

The delinquency petition was filed in Lincoln County on August 2 and adjudicated August 18. MC pleaded “true” to the charges. The same day, the Lincoln County Circuit Court ordered MC transported to Pope County for a hearing. Less than ninety days later, MC filed a Rule 37 petition in Lincoln County to vacate the delinquency adjudication, alleging that her counsel was ineffective by allowing her to plead true despite a viable self-defense theory. The circuit court dismissed for want of jurisdiction. MC appealed.

If that was the whole procedural history, this would be an easy affirmance. Though the General Assembly extended a Rule 37 remedy to juvenile proceedings, Ark. Code Ann. § 9-27-325(f) (Supp. 2023), it remains a remedy for offenders “only when they are in custody,” not on probation. *Walker v. State*, 330 Ark. 652, 657, 955 S.W.2d 905, 908 (1997). But after the Lincoln County adjudication, the Pope County Circuit Court committed MC to the Division of Youth Services (DYS)—in both cases, according to her petition; in only MC’s pending Pope County case, according to the State.¹

We here meet the wrong-court facet of the appeal. The Lincoln County Circuit Court concluded that it lacked jurisdiction because that court “did not commit the juvenile to [DYS]” but “placed the juvenile on probation for two years and transferred the case to Pope County where the commitment occurred.”

¹The Pope County proceedings are not in the record. This court denied MC’s request to supplement the record with a Pope County DHS commitment order that was filed in Lincoln County in February 2023, weeks after that court dismissed the Rule 37 petition.

The parties seem to agree that if the Pope County Circuit Court had not committed MC, then she would have had no Rule 37 remedy anywhere. Neither side's authorities directly answer the questions presented by the incomplete account of what happened there:

- Does Rule 37 allow relief from a probation sentence so long as the petitioner is in custody under another sentence?
- Does a court that sentenced the petitioner to probation at original adjudication have jurisdiction to grant Rule 37 relief if a custodial revocation sentence is entered by another court after supervision is transferred?

We agree with the State that Rule 37 relief was unavailable in Lincoln County either way. First, MC is not “in custody under sentence of [the Lincoln County Circuit Court.]” Ark. R. Crim. P. 37.1(a). Even if a criminal charge is adjudicated outside the jurisdiction where the crime occurred, and the resulting custodial sentence is void, the Rule 37 petition must be filed where the defendant was actually sentenced, not where the charges should have been filed. *State v. Cir. Ct. of Lincoln Cnty.*, 336 Ark. 122, 126, 984 S.W.2d 412, 414 (1999).

Second, a statute authorizes a court to transfer a probationer's supervision to a court of comparable jurisdiction in another county if the receiving court concurs. Ark. Code Ann. § 16-93-313(a) (Repl. 2016). The circuit court below transferred jurisdiction from Lincoln County to Pope County. The adjudication order memorialized that “Judge Coker [in Pope County] has agreed to accept [the] case” after transfer. If jurisdiction over a defendant is transferred, “the court in the county to which jurisdiction is transferred has any power with respect to the defendant previously possessed by the transferring court.” *Id.* §

16-93-313(b). Consequently, MC's Rule 37 petition had to be filed in Pope County, not Lincoln County.

Affirmed.

THYER and MURPHY, JJ., agree.

Lassiter & Cassinelli, by: *Michael Kiel Kaiser*, for appellant.

Tim Griffin, Att'y Gen., by: *Rebecca Kane*, Ass't Att'y Gen., for appellee.