

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ANDREE LAYTON ROAF, Judge

DIVISION IV

CACR06-125

October 11, 2006

LAWRENCE BROWN

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM JACKSON COUNTY
CIRCUIT COURT
[NO. CR-98-118]

HONORABLE HAROLD S. ERWIN,
CIRCUIT JUDGE

AFFIRMED

Appellant Lawrence Brown appeals from the revocation of his probation and sentence of five years in the Arkansas Department of Correction. Brown asserts that the trial court erred in denying his motion to dismiss because his probation hearing was not held within the sixty day statutory time period required under Arkansas Code Annotated § 5-4-310. We find no error and affirm.

On July 11, 2001, Brown was convicted of commercial burglary and theft of property and placed on three years' probation. On November 5, 2003, the State filed a petition to revoke Brown's probation, and the court extended his probation period to four years. On January 11, 2005, Brown was again arrested for breaking or entering and theft of property, and on January 24, 2005, the State filed another revocation petition. Brown does not argue that there was insufficient evidence to

revoke his probation but instead asserts that his due process rights were violated because more than sixty days elapsed between the date of his arrest and his December 15, 2005, revocation hearing. Brown argues that even though he was arrested on new charges, revoking his probation is fundamentally unfair because his probation officer visited the jail on January 24, 2005, and informed Brown that the State would be filing a petition for probation revocation and because the judgment and commitment order from his new convictions for breaking or entering and theft of property indicated that his sentence was to run concurrently with his probation revocation. Brown's argument is unavailing.

Arkansas Code Annotated § 5-4-310(b) (2) (Repl. 2006) provides:

The revocation hearing shall be conducted by the court that suspended imposition of sentence on the defendant or placed him or her on probation within a reasonable period of time after the defendant's arrest, not to exceed sixty (60) days.

Brown was arrested on January 11, 2005, and remained in jail until July 11, 2005, when he pled guilty to the crimes with which he had been charged. Brown was then incarcerated in the Arkansas Department of Correction from July 11, 2005, to October 21, 2005. The State waited until Brown's release from incarceration on the new charges to serve him with an arrest warrant for the revocation. The arrest was made on October 21, 2005, and his hearing was held on December 15, 2005, within sixty days. The sixty-day limitation in section 5-4-310(b)(2) is thus not applicable to Brown's case because he was incarcerated on other charges. *Bilderback v. State*, 319 Ark. 643, 893 S.W.2d 780 (1995). Our supreme court has long maintained that the sixty-day time limit is meant to ensure that a defendant arrested for a probation violation does not spend an unreasonable amount of time in jail awaiting the revocation hearing and that a defendant already incarcerated on other charges suffers no prejudice if the hearing is not conducted within sixty days of his arrest. *See Beasley v. Graves*, 315 Ark. 663, 869 S.W.2d 20 (1994); *Boone v. State*, 270 Ark. 83, 603 S.W.2d 410 (1980).

Brown had a timely revocation hearing. Brown remained incarcerated for nine months because of the breaking or entering and theft of property charges; however, he was not served with an arrest warrant for probation revocation until October 21, 2005, and his hearing was held less than sixty days later on December 15, 2005. While the State's conduct may be characterized as underhanded, it does not run afoul of the relevant statutory or case authority.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.