

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION II

CACR 06-1317

SEPTEMBER 12, 2007

COREY DEMETRIUS GRIFFIN
APPELLANT

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-98-194]

V.

HONORABLE DAVID N. LASER,
JUDGE

STATE OF ARKANSAS

APPELLEE

REVERSED

Appellant Corey Demetrius Griffin appeals a drug-related conviction entered in case number CR-98-194 as a result of probation revocation determined by the Crittenden County Circuit Court. Appellant argues three bases to reverse and dismiss: (1) the trial court lacked jurisdiction in 2003 to modify his original sentence entered in 1998 because it was already placed into execution; (2) the trial court lacked jurisdiction to extend probation in 2003 because his five-year probationary sentence had expired prior to the entry of judgment in 2003; and (3) the trial court lacked authority to extend or modify probation in 2003 because appellant was not provided new written conditions of probation in 2003. Because we find merit to the first argument, we reverse without discussing the second and third bases to reverse.

Appellant pleaded guilty and agreed to a five-year period of probation commencing on May 26, 1998 for a drug offense.¹ A “Judgment and Disposition Order” was entered that date, along with specified conditions he agreed to abide by during probation. The written conditions required him to pay fines of \$2500 and \$450, to pay court costs of \$175, and to pay this in \$100 monthly installments beginning June 28, 1998.

The State sought to revoke this probationary sentence in August 2000. The trial judge considered the petition and issued a written judgment signed on May 23, 2003, just three days prior to the expiration of appellant’s five-year term, but not filed of record until June 9, 2003. In this “Judgment and Disposition Order” the trial court extended probation for another forty-four months and lumped the previously stated monetary amounts into one sum denoted as “restitution,” totaling \$3125. Appellant was ordered to begin paying this restitution in \$100 monthly installments. This judgment specifically reflects that it was not the result of a revocation.

In December 2005, the State filed another revocation petition, which was heard and granted in August 2006. Appellant challenged the jurisdiction of the trial court to act on the petitions in 2006 and 2003 because the original probationary term had been placed into execution and could not be modified in 2003, because the probationary term had expired prior to the entry of a new judgment extending probation in 2003, and because there were

¹Appellant also pleaded guilty to a second drug-related offense for which he was sentenced to a suspended imposition of sentence. The original judgment of conviction contained both drug counts, but because the order on appeal concerns only the revocation of probation, the suspended imposition of sentence is not at issue on appeal.

no written conditions of probation presented to appellant in 2003 upon which to revoke in 2006. The trial court rejected all those arguments. Upon revocation, the trial court extended probation again, this time for sixty months. It is from this order that appellant brings the present appeal.

Because jurisdiction is the power or authority of a court to hear a case on its merits, lack of subject-matter jurisdiction is a defense that may be raised at any time by either party, even for the first time on appeal. *Young v. Smith*, 331 Ark. 525, 964 S.W.2d 784 (1998). Subject-matter jurisdiction also may be raised before this court on its own motion. See *Simpson v. State*, 310 Ark. 493, 837 S.W.2d 475 (1992); *Howard v. State*, 289 Ark. 587, 715 S.W.2d 440 (1986); *Coones v. State*, 280 Ark. 321, 657 S.W.2d 553 (1983). In this appeal, this issue has been argued to the trial court and is presented again for our consideration.

In Arkansas, sentencing is entirely a matter of statute. Ark. Code Ann. § 5-4-104(a) (Repl. 2006) ("[n]o defendant convicted of an offense shall be sentenced otherwise than in accordance with this chapter"); *State v. Hardiman*, 353 Ark. 125, 114 S.W.3d 164 (2003); *State v. Stephenson*, 340 Ark. 229, 9 S.W.3d 495 (2000). A sentence is void when the trial court lacks authority to impose it. *Howard v. State*, 289 Ark. 587, 715 S.W.2d 440 (1986). Where the law does not authorize the particular sentence pronounced by a trial court, the sentence is unauthorized and illegal, and the case must be reversed. *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003); *Stephenson, supra*.

Prior to Act 1569 of 1999, a sentence was put into execution when a trial court issued a judgment of conviction or a commitment order. *Mosley v. State*, ___ Ark. ___, ___ S.W.3d ___

(June 7, 2007). A plea of guilty, coupled with a fine and either probation or a suspended imposition of sentence, constitutes a conviction, thereby depriving a trial court of jurisdiction to amend or modify a sentence that had been executed. *Id. Pike v. State*, 344 Ark. 478, 40 S.W.3d 795 (2001). This status of the law was changed by Act 1569 of 1999, which amended Ark. Code Ann. § 5-4-301(d) to permit modifications to probated sentences that have been placed into execution. However, because Act 1569 was not in effect at the time the crimes were committed by Mr. Griffin, it does not apply to this case. *See Bagwell v. State*, 346 Ark. 18, 53 S.W.3d 520 (2001).

In this instance, appellant entered a guilty plea; the trial court imposed an original probationary term in 1998 with fines of \$2500 and \$450, and court costs of \$175; and a judgment was filed of record reflecting five years of probation. At that time, there was no order of restitution. In 2003, upon the State's petition to revoke probation, the trial court specifically denoted in its judgment that it did not revoke probation. Instead, it extended the probationary term for an additional forty-four months, and it set forth a new restitution order of \$3125. The State argues to us that the 2003 judgment "should be construed as one revoking probation" and that "the order is internally contradictory and must be construed to give effect to the intent of the circuit court."

We hold that the action of the trial court in 2003, as it appears on the face of the judgment, constituted a modification, for which the trial court lacked jurisdiction. *See Bagwell, supra; McGhee v. State*, 334 Ark. 543, 975 S.W.2d 834 (1998); *Harmon v. State*, 317 Ark. 47, 876 S.W.2d 240 (1994). The modification consisted of ordering restitution and in

setting forty-four months of additional probation. To call this a revocation would be in direct conflict with what the order recites it to be. Jurisdiction to modify appellant's original sentence was lost once it had been placed into execution. *Compare Gates v. State*, 353 Ark. 333, 107 S.W.3d 868 (2003). It flows therefrom that the judgment rendered in 2003 was void, and the 2006 revocation was likewise void.

Reversed.

GLOVER and BAKER, JJ., agree.