ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
D.P. MARSHALL JR., JUDGE

DIVISION I

CACR07-1108

28 May 2008

ERIC E. FIORE,

v. APPELLANT

STATE OF ARKANSAS,

APPELLEE

AN APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT
[CR2002-397, 2005-1105]

THE HONORABLE J. MICHAEL FITZHUGH, JUDGE

AFFIRMED

Eric Fiore appeals the circuit court's revocation of his suspended imposition of sentence. We affirm. The State did not violate Fiore's right to a timely revocation hearing, and Fiore was not denied adequate access to the courts.

I.

We address Fiore's speedy-hearing argument first. Fiore was arrested on 15 October 2006 on charges other than violating his SIS. Then these events occurred:

16 October 2006	The State filed its amended petition to revoke Fiore's SIS.
21 November 2006	The circuit court revoked Fiore's SIS.
1 December 2006	Fiore moved pro se for a mental examination.

11 December 2006	The court vacated its earlier revocation judgment, and ordered a new revocation hearing.
20 December 2006	The court ordered a mental examination for Fiore.
8 May 2007	The court found Fiore found incompetent and committed him to the Department of Human Services to restore his competency.
4 June 2007	A report finding Fiore competent was filed.
20 July 2007	The circuit court revoked Fiore's SIS at a revocation hearing.

In general, the circuit court must conduct a revocation hearing within sixty days of a defendant's arrest for violating the conditions of his SIS. Ark. Code Ann. § 5-4-310(b)(2) (Repl. 2006). But this rule does not apply here because Fiore was arrested for theft and possessing drugs and drug paraphernalia, not for violating the terms of his SIS. *Beasley v. Graves*, 315 Ark. 663, 664, 869 S.W.2d 20, 21 (1994); *Reynolds v. State*, 282 Ark. 98, 100, 666 S.W.2d 396, 398 (1984). Nevertheless, the circuit court originally revoked his SIS about one month after the State had filed its amended petition. Fiore was not held in jail for an unreasonably long period awaiting this hearing. *Ibid*. Fiore, however, reopened his case by moving pro se for a mental evaluation, causing the court to vacate its prior revocation and order a new revocation hearing.

Because Fiore was still in custody awaiting trial on the drug charges, he suffered no prejudice from any delay in holding a second revocation hearing. *Beasley*, *supra*. But even if Fiore was entitled to another timely revocation hearing, he was not denied

this right. His sixty-day period began anew on 11 December 2006—the date that the court ordered a new revocation hearing. *Cf. Green v. State*, 29 Ark. App. 69, 70, 777 S.W.2d 225, 226 (1989). That period was tolled nine days later when the circuit court ordered his mental evaluation. *Morgan v. State*, 333 Ark. 294, 299, 971 S.W.2d 219, 221–22 (1998). For the next few months, Fiore underwent mental evaluations, was incompetent, and participated in various competency proceedings. All this time is excluded. Ark. R. Crim. P. 28.3(a); *Romes v. State*, 356 Ark. 26, 38–41, 144 S.W.3d 750, 758–59 (2004). The tolled period ended on 4 June 2007 with the filing of a report finding Fiore competent to stand trial. *Morgan*, *supra*. His revocation hearing was held on 20 July 2007. Excluding days when the sixty-day period was tolled, the State held Fiore's revocation hearing fifty-five days after notifying him that he would have a second hearing on the State's petition to revoke. This schedule complied with the governing law. *Lindsey v. State*, 86 Ark. App. 297, 203, 184 S.W.3d 458, 461 (2004); *Reynolds*, *supra*.

Fiore argues that much of the pre-hearing delay was not due to competency proceedings, but was instead the result of the State's failure to give him a mental exam promptly. Further, he argues that any delay after he returned to jail from his commitment at DHS is not excludable because it was due to the State's failure to proceed even though it knew he was competent. We reject Fiore's legal analysis. The record does not show that the State purposely delayed Fiore's mental exam or knew that he was competent to proceed before the report about his mental exam was filed

in June 2007.

Fiore also argues that we must hold the State to the "concessions" it made in its response to Fiore's motion to dismiss in the circuit court. In that response, the State said that the sixty-day period began to run on 29 November 2006 "when the sentence was set aside" and was tolled on 1 December 2006 when Fiore filed his pro se motion for a mental evaluation. The State's statements mixed fact and law, and it was wrong on both. In general, we are not bound by the State's statements of fact or its view of the legal results arising from those statements. *Burrell v. State*, 65 Ark. App. 272, 275–76, 986 S.W.2d 141, 142–43 (1999); *cf. DuBois v. State*, 254 Ark. 543, 545, 494 S.W.2d 700, 701 (1973) (holding the State to the legal concession that another person was an accomplice because that concession probably affected the defendant's entire trial strategy) (Joe C. Barrett, Special Justice). Moreover, we may affirm the circuit court's decision if it reached the right result, even if it did so for the wrong reason. *Ramage v. State*, 61 Ark. App. 174, 178, 966 S.W.2d 267, 269, fn. 1 (1998). This is what happened here. We hold that the circuit court was correct in denying Fiore's motion. He was not held in jail for an unreasonably long time after he was notified that the State's petition for revocation was pending. *Reynolds*, *supra*.

II.

Fiore next argues that he was denied his constitutional right to access the courts. We agree with Fiore that, because the court denied his motion to use a law library, the narrow issue is whether he received adequate assistance from Barry Neal, his stand-by

counsel. *Rowbottom v. State*, 327 Ark. 79, 80, 938 S.W.2d 224, 226 (1997).

The circuit court appointed Neal to represent Fiore in December 2006 when it vacated the first revocation judgment. A few months later, Fiore sued Neal in federal court. Then he asked the circuit court to remove Neal as his appointed counsel for an alleged conflict of interest. Neal also moved to withdraw, in part, because of Fiore's lawsuit.

At a hearing in June 2007, the circuit court questioned Neal on the record about the potential conflict. Neal admitted that Fiore was a difficult client and that they disagreed about how to handle the defense. But Neal told the court that "I am an officer of this Court and the way he feels would not affect my representation of him at all." The circuit court relieved Neal as counsel of record, allowed Fiore to represent himself, and ordered Neal to be stand-by counsel. The court told Neal to "be prepared, if it comes to it, that you take over whatever case it may be, at whatever stage it is." After June 2007, therefore, Neal did not represent Fiore. By the time of the second revocation hearing in July 2007, Fiore's lawsuit against Neal had been dismissed.

At the second revocation hearing, Fiore argued that Neal had a conflict of interest and provided him with legal materials too late to prepare his defense adequately. He renews this argument on appeal, but it does not persuade us. Fiore chose to represent himself. The circuit court dissolved the attorney-client relationship between Fiore and Neal in early June 2007. After that point, Neal was only on stand

by. Moreover, the circuit court thoroughly questioned Neal about the potential conflict that might arise if the court ordered him to resume his representation and handle Fiore's defense at the revocation hearing. *Townsend v. State*, 350 Ark. 129, 133–36, 85 S.W.3d 526, 528–30 (2002). Our cases hold that Neal was in the best position professionally and ethically to help the court decide whether a conflict existed or would develop. *Strong v. State*, 370 Ark. 87, 88, ___ S.W.3d ___, ___ (2007). And Neal assured the circuit court that Fiore's feelings about him would not affect Neal's potential representation if the court called him back into action. We see no reversible error in these circumstances.

We also disagree that Neal's assistance was ineffective so as to deny Fiore access to legal materials. Soon after he began representing himself, Fiore complained to the court that he had no access to a law library. A couple of weeks later, Neal brought him ten court opinions and two books to review—*Trial Advocacy* and the Arkansas Rules of Criminal Procedure. Fiore was preparing for a revocation hearing, not a trial. And it was a re-run of his first revocation hearing. Based on the level of legal sophistication and intelligence exhibited by Fiore throughout his case, we discern no prejudice from the fact that he did not receive these materials until about a week before his hearing.

Affirmed.

HART and GLADWIN, JJ., agree.