

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SAM BIRD, JUDGE

DIVISION IV

CACR07-1110

MAY 7, 2008

TIMOTHY RAY BUFKIN  
APPELLANT

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. CR-04-90-1]

V.

HON. GARY COTTRELL, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Timothy Bufkin appeals the trial court's revocation of his probation for possession of methamphetamine and possession of drug paraphernalia, Class C felonies. The trial court revoked his probation and sentenced him to ten years' imprisonment on each offense, to run concurrently. Bufkin's sole point on appeal is that the trial court was without subject-matter jurisdiction to revoke his probation.<sup>1</sup> We hold that the trial court had subject-matter jurisdiction to revoke his probation; therefore, we affirm.

On November 22, 2004, Bufkin entered a plea of guilty to the offenses of possession of methamphetamine and possession of drug paraphernalia. The trial court entered a

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<sup>1</sup>Although Bufkin did not argue lack of subject-matter jurisdiction in the trial court, subject-matter jurisdiction may be raised for the first time on appeal. See *Gates v. State*, 353 Ark. 333, 107 S.W.3d 868 (2003).

judgment and commitment order on the plea on December 8, 2004, ordering Bufkin to pay a fine in the amount of \$1500 and placing him on probation for a period of thirty-six months. On May 23, 2006, pursuant to a petition by the State to revoke probation and a hearing, the trial court entered an order extending Bufkin's probation for three years, forfeiting his cash bond in order to pay a fine and court costs, and ordering him to attend Narcotics Anonymous meetings for six months and to submit to random drug tests. The State filed a second petition to revoke in October 2006, and the trial court held a hearing on the petition on April 18, 2007. The trial court revoked Bufkin's probation and sentenced him to concurrent sentences of ten years' imprisonment. It is from this order that Bufkin appeals.

Bufkin contends that the original order of probation, which included the payment of a fine, constituted a conviction and executed sentence. See Ark. Code Ann. § 5-4-301(d) (Repl. 2006). To support his argument, Bufkin relies on caselaw of the supreme court holding that, once a trial court has entered a conviction and a defendant's sentence has been placed into execution, the trial court loses jurisdiction over the defendant and cannot thereafter modify or amend his original sentence. See, e.g., *McGhee v. State*, 334 Ark. 543, 975 S.W.2d 834 (1998); *Harmon v. State*, 317 Ark. 47, 876 S.W.2d 240 (1994).

Bufkin's contention is incorrect. While *McGhee* does stand for the proposition argued by Bufkin, *McGhee* was specifically overruled by the supreme court in *Moseley v. State*, 349 Ark. 589, 80 S.W.3d 325 (2002), and is no longer good law. In *Moseley*, the court held that Act 1569 of 1999 specifically overturned the *McGhee* decision and that trial courts are now "specifically authorized to modify original court orders and even add penalties to those orders up to the statutory limits." *Moseley*, 349 Ark. at 595, 80 S.W.3d at 328. While Ark. Code

Ann. § 5-4-301(d)(1) still provides that the trial court must enter a judgment of conviction if the probated or suspended sentence includes the payment of a fine or a term of imprisonment, Act 1569 amended Ark. Code Ann. § 5-4-301(d) by adding subsection (d)(2), which provides that the entry of a judgment of conviction “does not preclude . . . [t]he modification of the original order suspending the imposition of sentence on a defendant or placing a defendant on probation following a revocation hearing . . .” Ark. Code Ann. § 5-4-301(d) (Repl. 2006). In *Moseley*, the supreme court held that the trial court’s original order of confinement with probation did not preclude its later order of six years’ imprisonment following the State’s second petition for revocation and a finding of guilt on that petition. 349 Ark. at 599, 80 S.W.3d at 331.

The law now allows modification of a probated sentence despite the fact that a judgment of conviction has been entered as a result of a fine being imposed. *See* Ark. Code Ann. § 5-4-301(d)(1) & (2) (Repl. 2006). Accordingly, we reject Bufkin’s point on appeal and hold that the trial court had subject-matter jurisdiction to revoke his probation.

Affirmed.

ROBBINS and GLOVER, JJ., agree.