

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR08-56

June 18, 2008

JAMIE M. EDWARDS  
APPELLANT

AN APPEAL FROM SEBASTIAN  
COUNTY CIRCUIT COURT  
[CR2004-1155]

V.

HON. JAMES O. COX, JUDGE

STATE OF ARKANSAS  
APPELLEE

AFFIRMED AS MODIFIED

On October 3, 2007, the Sebastian County Circuit Court revoked the suspended sentence of Jamie M. Edwards and sentenced him to two concurrent ten-year terms in the Arkansas Department of Correction. He challenges the sufficiency of the evidence to support the revocation. We hold that appellant's son's testimony established that appellant violated the terms and conditions of his suspended sentence. However, the judgment and commitment order reflects that appellant was given an illegal sentence, as appellant was sentenced to ten years for a Class D felony. Accordingly, we modify the judgment and commitment order to reflect a six-year sentence on the charge of aggravated assault, to be served concurrently with his ten-year sentence on the charge of false imprisonment in the first degree, and affirm the revocation of appellant's suspended sentence.

On April 20, 2005, appellant pleaded guilty to aggravated assault and false imprisonment in the first degree, for which he received three years' suspended imposition of sentence. The suspended sentence was conditioned upon, among other things, good behavior

and forfeiture of his gun. On August 31, 2007, the State filed a petition to revoke the suspended sentence, alleging that appellant committed the new offenses of aggravated assault, felon in possession of a firearm, and domestic battery in the third degree. The trial court held a hearing on the State's petition on October 3, 2007.

Appellant's son, Eric Edwards, testified that he went to appellant's residence with his girlfriend, Melinda Serna, on August 14, 2007, to retrieve his clothes. He attempted to talk to appellant, but appellant did not want to talk to him. When Eric went to collect his clothes, he noticed that some were missing. He turned to his father, who started swearing at him. Appellant later began pushing Eric on his chest. The two began fighting, and during the fight, appellant jabbed Eric in the head with a pool stick. Eric then decided to leave, at Melinda's insistence. Appellant continued to hit Eric as he tried to leave. As Eric and Melinda got into their vehicle, appellant's girlfriend came out of the house and started swearing. Then, appellant exited the house with a .22-caliber Ruger rifle. Eric started yelling and told appellant to shoot him, at which point appellant fired two or three shots in Eric's direction. The State also presented testimony from Melinda, who also saw the fight. She stated that she heard one or two gunshots but did not see where the shots came from.

Police later received consent to search the residence. Prior to the search, an officer asked appellant where the gun was. Appellant denied that there was a gun in the house. The officer asked appellant a second time, and appellant told the officer that it was in the middle closet of the middle bedroom. Police went to that closet and found a .22-caliber Ruger rifle. No one performed a gunshot residue test, but police smelled gun powder residue on the rifle. No shell casings were found at the scene. Appellant's daughter, Jennifer Edwards, testified that the gun originally belonged to appellant's father, that it was involved in a previous incident where appellant had shot himself, and that she retrieved the gun from the police station because it was a family heirloom.

At the conclusion of the hearing, the trial court revoked appellant's suspended sentence. It noted that appellant's maximum exposure in this case was ten years in the Arkansas Department of Correction, and it sentenced him to ten years. The judgment and commitment order reflects that appellant was sentenced to ten years' imprisonment on both the aggravated-assault and false-imprisonment charges, both sentences to be served concurrently.

Appellant's sole point on appeal is a challenge to the sufficiency of the evidence to support the revocation. A sentence of probation or a suspended sentence may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). The State needs only show that the appellant committed one violation to sustain a revocation. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We give great deference to the trial court in determining the preponderance of the evidence because the trial judge is in a superior position to determine the credibility of witnesses and to determine the weight to be given to their testimony. *Id.* We will not reverse the revocation unless the decision is clearly against the preponderance of the evidence. *Williams, supra.*

Appellant argues that the State failed to show that he violated the terms and conditions of his suspended sentence. As he did at trial, he asserted that the State's entire case was based upon the testimony of Eric, who had a tumultuous and violent relationship with appellant. He also identifies discrepancies between Eric's and Melinda's testimony.

Appellant's argument in a nutshell is that Eric's testimony should not be believed. However, our standard of review requires us to defer to the trial court's determination of the credibility given to witness testimony. *See Richardson, supra.* Here, the trial court gave weight to Eric's testimony. That testimony established that appellant attacked Eric with a pool stick,

grabbed a firearm, and fired up to three shots toward him. As noted by the State, any of these actions would be substantial evidence that appellant violated the terms and conditions of his probation.

However, as we previously stated, the judgment and commitment order shows that appellant was given an illegal sentence. While appellant does not raise this issue, the issue of a void or illegal sentence is one that goes to the trial court's subject-matter jurisdiction, which cannot be waived by the parties and can be addressed for the first time on appeal. *See, e.g., State v. Webb*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Mar. 20, 2008) (citing *Thomas v. State*, 349 Ark. 447, 79 S.W.3d 347 (2002); *Bangs v. State*, 310 Ark. 235, 835 S.W.2d 294 (1992)). The issue of an illegal sentence is also one that this court is obligated to raise *sua sponte*. *See, e.g., Campea v. State*, 87 Ark. App. 225, 189 S.W.3d 459 (2004). A sentence is illegal when the trial court lacks the authority to impose it. *See, e.g., Mayes v. State*, 351 Ark. 26, 89 S.W.3d 926 (2002).

When revoking a suspended sentence, the trial court is authorized to impose any sentence on the defendant that might have been imposed originally for the offense of which he was found guilty. *See* Ark. Code Ann. § 5-4-309(f)(1)(A) (Repl. 2006). Here, appellant was originally placed on probation for aggravated assault, a Class D felony, *see* Ark. Code Ann. § 5-13-204(b) (Repl. 2006), and first-degree false imprisonment, a Class C felony, *see* Ark. Code Ann. § 5-11-103(b) (Repl. 2006). The trial court sentenced appellant to ten-year terms of imprisonment on both charges. While a ten-year sentence is within the bounds for a Class C felony, *see* Ark. Code Ann. 5-4-401(a)(4) (Repl. 2006) (setting the maximum sentence for a Class C felony at ten years), it is beyond the statutory maximum for a Class D felony, *see* Ark. Code Ann. § 5-4-401(a)(5) (setting the maximum sentence for a Class D felony at six years). Accordingly, we affirm the revocation of appellant's suspended sentence, but we modify his sentence on the aggravated-assault charge to six years in the Arkansas Department

of Correction, to be served concurrently with the ten-year term on the false-imprisonment charge.

Affirmed as modified.

ROBBINS and VAUGHT, JJ., agree.