

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR10-370

OTIS STRIBLING

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2011

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[CR-2008-335-1]HONORABLE BERLIN C. JONES,
JUDGEREMANDED WITH
INSTRUCTIONS**DAVID M. GLOVER, Judge**

This is the third time this case has been before this court. In January of this year, we first remanded the case to settle and supplement the record and for rebriefing. *Stribling v. State*, 2011 Ark. App. 57. Appellant's counsel corrected the deficiencies noted in that opinion and again submitted a brief in no-merit form. In an opinion dated May 25, 2011, we held that an appeal would not be wholly frivolous and ordered rebriefing a second time, further directing that counsel submit an adversarial brief. *Stribling v. State*, 2011 Ark. App. 386. Counsel has now submitted an adversarial brief, arguing that the trial court imposed an illegal sentence. We find merit in this argument, and we remand to the trial court to enter a new judgment and commitment order.

Appellant Otis Stribling was tried by a jury and found guilty of possession of a controlled substance (cocaine). After the jury found Stribling guilty of possession of

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cocaine, it presented the trial court with two sentencing options—three years in the Arkansas Department of Correction and a \$5000 fine, or an alternative sentence of five years’ probation and a \$5000 fine. The trial court stated that it would not consider “straight probation.” In response, the State suggested probation with the condition of mandatory drug treatment and any other requirement associated with a rehabilitation program. At sentencing, the trial court rejected defense counsel’s request that Stribling be allowed to complete a voluntary thirty-day rehabilitation through the Veterans Administration and instead ordered Stribling to serve three years’ incarceration in the Arkansas Department of Correction, with a judicial transfer to a CCC unit for a year-long intensive drug-rehabilitation program. One of the special conditions noted in Stribling’s judgment and commitment order was that he complete a mandatory drug program.

On appeal, Stribling contends that this is an illegal sentence. We agree that the trial court’s imposition of the condition that Stribling complete a mandatory drug program while incarcerated is an illegal sentence in accordance with our supreme court’s decision in *Richie v. State*, 2009 Ark. 602, ___ S.W.3d ___. An illegal sentence is an issue of subject-matter jurisdiction, which the appellate courts may review whether or not an objection was made in the trial court. *Id.* A sentence is illegal when the trial court lacks the authority to impose it. *Id.* In *Richie*, the supreme court stated:

Arkansas Code Annotated section 5-4-104(a) (Repl. 2006) declares that “[n]o defendant convicted of an offense shall be sentenced otherwise than in accordance with this chapter.” In Arkansas, sentencing is entirely a matter of statute. *Donaldson, supra*. In stating this general rule, this court has consistently held that sentencing shall not be other than in accordance with the statute in effect at the time of the

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commission of the crime. *Id.* Specifically, where the law does not authorize the particular sentence pronounced by the trial court, the sentence is unauthorized and illegal. *Id.*

Section 5-4-104(d) sets out authorized sentences as follows:

(d) A defendant convicted of an offense other than a Class Y felony, capital murder, § 5-10-101, treason, § 5-51-201, or murder in the second degree, § 5-10-103, may be sentenced to any one (1) or more of the following, except as precluded by subsection (e) of this section:

- (1) Imprisonment as authorized by §§ 5-4-401 — 5-4-404;
- (2) Probation as authorized by §§ 5-4-301 — 5-4-311;
- (3) Payment of a fine as authorized by §§ 5-4-201 — 5-4-203;
- (4) Restitution as authorized by a provision of § 5-4-205; or
- (5) Imprisonment and payment of a fine.¹

2009 Ark. 602, at 7, ___ S.W.3d at ___.

The *Richie* court held that while a circuit court had the authority to place conditions on a defendant when he is placed on probation or is given a suspended imposition of sentence, there is no similar provision that allows a court to place specific conditions on a sentence of incarceration. In that case, the supreme court held that the provision requiring Richie to submit to drug-and-alcohol treatment and counseling was an illegal sentence.

¹The most recent version of this statute, Ark. Code Ann. § 5-4-104(d) (Supp. 2009), is identical to the 2006 version.

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In the present case, the trial court ordered Stribling, as a condition of his incarceration, to attend mandatory drug treatment. This is in direct contravention to the *Richie* holding and constitutes an illegal sentence.

This case is remanded to the trial court with instructions to strike the unlawful condition and to enter a new judgment and commitment order that does not include any conditions on Stribling's incarceration.

ROBBINS and WYNNE, JJ., agree.