

SUPREME COURT OF ARKANSAS

No. CR-11-372

WALTER LEE WALTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 20, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, 66CR-06-
318, HON. JAMES O. COX, JUDGE

AFFIRMED.

PER CURIAM

In 2006, appellant Walter Lee Walton entered a plea of guilty to possession of marijuana, possession of methamphetamine, and possession of drug paraphernalia. Upon conviction, a cumulative sentence of 36 months' imprisonment in the Arkansas Department of Correction was imposed along with an additional 84 months' suspended imposition of sentence. In 2010, the State filed a petition to revoke appellant's suspended sentence.¹ Appellant entered a plea of no contest. Following a revocation hearing, the circuit court granted the State's petition, revoked appellant's suspended sentence, and sentenced appellant to a term of 168 months' imprisonment.

Appellant timely filed in the circuit court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 2011). The petition was denied, and appellant now appeals that order. We find no error and affirm.

¹The State filed a "Petition to Revoke and/or Show Cause" on September 14, 2010, alleging that appellant was charged with first-degree murder in Sebastian County Circuit Court No. CR-10-951. On October 13, 2010, the State amended its petition, alleging that appellant also violated the terms and conditions of his suspended sentence by committing first-degree battery.

In Arkansas, sentencing is entirely a matter of statute. *State v. Colvin*, 2013 Ark. 203, ___ S.W.3d ___; *Glaze v. State*, 2011 Ark. 464, 385 S.W.3d 203; *Maldonado v. State*, 2009 Ark. 432; *State v. Joslin*, 364 Ark. 545, 222 S.W.3d 168 (2006); *Bunch v. State*, 344 Ark. 730, 43 S.W.3d 132 (2001). No sentence shall be imposed other than as prescribed by statute. *Maldonado*, 2009 Ark. 432 (citing *Harness v. State*, 352 Ark. 335, 339, 101 S.W.3d 235, 238 (2003)).

Arkansas Code Annotated section 5-4-403(a) (Repl. 2006) provides

[w]hen multiple sentences of imprisonment are imposed on a defendant convicted of more than one (1) offense, including an offense for which a previous suspension or probation has been revoked, the sentences shall run concurrently unless, upon recommendation of the jury or the court's own motion, the court orders the sentences to run consecutively.

Whether a sentence is ordered to run consecutively or concurrently is a matter entirely within the province and discretion of the circuit judge. *Edwards v. State*, 2010 Ark. 85 (per curiam); *Maldonado*, 2009 Ark. 432; *Smith v. State*, 354 Ark. 226, 118 S.W.3d 542 (2003). Multiple periods of probation and suspension, however, are to run concurrently. Ark. Code Ann. § 5-4-307 (Repl. 2006). Our law provides that where a sentence is revoked, “the court may enter a judgment of conviction and may impose any sentence on the defendant that might have been imposed originally for the offense of which he or she was found guilty.” Ark. Code Ann. § 5-4-309(g)(1)(A) (Supp. 2009) (formerly codified at Ark. Code Ann. § 5-4-309(f)(1)(A) (Repl. 2006)).

Appellant argues that his maximum exposure at the imposition of his original sentence was 120 months, 36 months of which were already served; thus, the circuit court's revocation order, sentencing him to 168 months' imprisonment, was beyond the statutory maximum to which he was originally exposed. It appears from appellant's argument that he mistakenly

believes that he was originally sentenced to 36 months' imprisonment for the charge of possession of drug paraphernalia and 84 months' imprisonment for the charge of possession of methamphetamine.

To the contrary, appellant was originally sentenced to concurrent sentences of 12 months' imprisonment for the charge of possession of marijuana, a Class A misdemeanor; 36 months' imprisonment and an additional 84 months' suspended imposition of sentence for the charge of possession of methamphetamine, a Class C felony; and 36 months' imprisonment and an additional 84 months' suspended imposition of sentence for the charge of possession of drug paraphernalia, a Class C felony. Appellant does not assert any illegality regarding his original sentences.

Upon revocation of his suspended sentence, the circuit court imposed consecutive sentences of 84 months' imprisonment for the charge of possession of drug paraphernalia and 84 months' imprisonment for the charge of possession of methamphetamine. *See* Ark. Code Ann. § 5-64-403 (Repl. 2006); Ark. Code Ann. § 5-64-401 (Repl. 2006). Arkansas Code Annotated section 5-4-401 provides that Class C felonies are punishable by "not less than three (3) years nor more than ten (10) years." Thus, at his original sentencing, appellant was exposed to a maximum of 10 years' imprisonment for each of his felony convictions.

Appellant argues in the alternative that even if he was originally sentenced to two concurrent suspended sentences, the circuit judge did not have the authority to order consecutive sentences upon revocation. Arkansas law is clear that, even when imposing sentences for offenses where suspension or probation is revoked, it is within the circuit court's

Cite as 2013 Ark. 265

discretion to order the sentences to run consecutively or concurrently. *See* Ark. Code Ann. 5-4-403(a). As it lies within the discretion of the circuit judge to impose consecutive or concurrent sentences, appellant's maximum exposure for his two felony convictions was 20 years' or 240 months' imprisonment. Thus, appellant's sentence of 168 months' imprisonment upon revocation is within the statutory limits to which he was originally exposed.

Finally, without citation to authority, appellant argues that the revocation order and resentencing subjected him to double jeopardy. Appellant's argument is without merit. Revocation proceedings are not considered a stage of a criminal prosecution and, thus, do not subject a criminal defendant to double jeopardy. *Lee v. State*, 2010 Ark. 261 (per curiam). Once appellant failed to comply with the terms and conditions of his suspended sentence, the circuit court was authorized, pursuant to section 5-4-309(g)(1)(A), to impose any sentence that may have been originally imposed for the offense of which he was found guilty.

Affirmed.

Walter Lee Walton, pro se appellant.

Dustin McDaniel, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellee.