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SUPREME COURT OF ARKANSAS

No. CR11-919

PHILLIP SULLIVAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 26, 2012

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CR1997-2195]

HONORABLE HERBERT T. WRIGHT, JR., JUDGE

AFFIRMED.

ROBERT L. BROWN, Associate Justice

Appellant Phillip Sullivan appeals from an order entered by the Pulaski County Circuit Court denying his petition to seal the record in his 1997 theft-of-property case. We affirm.

Sullivan was arrested on April 27, 1997, and charged with theft of property, terroristic threatening in the first degree, and criminal mischief in the first degree. On October 1, 1997, Sullivan pled guilty to theft of property, a class C felony, and was placed on probation for three years, fined $300, and ordered to pay $120 in restitution.[1] He was sentenced pursuant to Act 531 of 1993, known as the Community Punishment Act, codified at Arkansas Code Annotated sections 16-93-1201 to -1210. Subsequent to his sentence in 1997 for theft of property, Sullivan was convicted of theft of property, a class B felony, in Case No. 2000-420

[1]The other two charges for terroristic threatening and criminal mischief were nol-prossed.

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in Saline County, on November 1, 2000, and second-degree forgery, a class C felony, in Case No. 2000-81 in Cleburne County, on April 3, 2001.

On April 13, 2011, Sullivan filed a petition to seal the record in his 1997 theft-of-property case claiming that he was entitled to have his record expunged pursuant to the provisions of Act 531. The State responded to Sullivan's petition to seal and argued that Sullivan did not successfully complete his probation because he committed two misdemeanor and two felony offenses after the 1997 conviction and during his probationary period. Thus, the State contended, he was not eligible to have the record for the conviction sealed under Act 531.

A hearing was held on June 28, 2011, and the circuit court ruled that it lacked jurisdiction to seal his record under Act 531 and stated that it would deny his petition on that basis. The circuit court entered an order on July 5, 2011, which read that "Pursuant to Ark. Code Ann. Sec. 16-93-1207(b)(1), upon successful completion of probation the Court may direct that the record of the offender be expunged 'under the condition that the offender has no more than one (1) previous felony conviction . . .' unless that one conviction is for certain offenses which are not applicable to the instant case." The court then found that at the time of the hearing, Sullivan "had two previous felony convictions, which, even though he was convicted in those cases after he was placed on probation in this case, render him ineligible to have the record in this case sealed." The circuit court, as a result of this finding, determined that it was without jurisdiction to grant the relief requested in Sullivan's petition and denied the petition on that basis.

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For his sole point on appeal, Sullivan contends that the circuit court erred in determining that it lacked jurisdiction to seal his 1997 conviction for theft of property. He claims that the circuit court did have jurisdiction to seal his conviction because, under the wording of the current version of Arkansas Code Annotated section 16-93-1207, he had no previous felony convictions at the time he was sentenced. He further claims that the time period relevant to the consideration of what constitutes "previous felony convictions" is not at the time of the filing of the Petition to Seal; rather, it is at the time of sentencing.

In response, the State urges that this court may disregard the jurisdictional question, as well as the meaning of "previous felony convictions," and affirm on the basis that the circuit court had discretion under the statute to expunge Sullivan's record because of the statute's inclusion of the word "may." The State then claims that this court should affirm because the circuit court's denial of Sullivan's requested relief was not an abuse of discretion, given the number of convictions Sullivan acquired during and after his probationary period.

As already noted, Sullivan was sentenced in 1997 under Act 531 of 1993. Act 531 contains provisions for the expungement of the offender's record under certain circumstances. It is a well-established rule that a sentence must be in accordance with the statutes in effect on the date of the crime. *See State v. Burnett*, 368 Ark. 625, 249 S.W.3d 141 (2007). The offense in question occurred on February 25, 1997; therefore, when determining whether Sullivan was entitled to have his record expunged, the circuit court was required to apply the version of section 16-93-1207 in effect at the time of the commission of the offense. At the time Sullivan committed the theft of property in 1997, the statute provided as follows:

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> (b)(1) Upon successful completion of probation or a commitment to the Arkansas Department of Correction with judicial transfer to the Department of Community Punishment for one of the offenses targeted by the General Assembly for community punishment placement, the court may direct that the record of the offender be expunged of the offense of which the offender was convicted under the following conditions:
> (A) That the offender was under the age of twenty-six (26) years at the time of the commission of the felony offense and had no more than one (1) previous felony conviction and that the previous felony was other than a conviction for a capital offense, or murder in the first degree, murder in the second degree, first degree rape, kidnapping, or aggravated robbery; or
> (B) That the offender was over the age of eighteen (18) years of age and does not have a previous conviction for the offense of delivering controlled substances to a minor, as prohibited in § 5-64-701(a)(2); or
> (C) That the offender has no prior felony convictions.

Ark. Code Ann. § 16-93-1207(b)(1) (Supp. 1995).

In its July 5, 2011 order, the circuit court quoted from section 16-93-1207(b)(1), and said that "upon successful completion of probation the Court may direct that the record of the offender be expunged 'under the condition that the offender has no more than one (1) previous felony conviction . . . .'" This is not a quotation from the version of the statute in effect in 1997, as set out above, but, instead, the language quoted tracks the language of the 2011 version.[2]

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[2]Arkansas Code Annotated section 16-93-1207 currently reads:

> (b)(1) Upon the successful completion of probation or a commitment to the Department of Correction with judicial transfer to the Department of Community Correction or a commitment to a county jail for one (1) of the offenses targeted by the General Assembly for community correction placement, the court may direct that the record of the offender be expunged of the offense of which the offender was either convicted or placed on probation *under the condition that the offender has no more than one (1) previous felony conviction* and that the previous felony was other than a conviction for:
> (A) A capital offense;
> (B) Murder in the first degree, § 5-10-102;

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Be that as it may, Sullivan did not object to the circuit court's use of the 2011 version of the statute and even on appeal merely raises arguments relating to the interpretation of that version. In his appellate brief, Sullivan quotes the 2011 version of the statute and makes only a passing reference to this court's rule that the sentence must be in accordance with the statutes in effect on the date of the crime. This singular reference to a rule of black-letter law, without any development or argument that the circuit court applied the wrong version of the statute, simply is not enough for this court to decide the issue. This court has been resolute in stating that we will not make a party's argument for that party or raise an issue sua sponte, unless it involves the circuit court's subject-matter jurisdiction, which we will raise on our own.[3] *Hanlin v. State*, 356 Ark. 516, 157 S.W.3d 181 (2004). We have further made it clear

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(C) Murder in the second degree, § 5-10-103;
(D) First degree rape, § 5-14-103;
(E) Kidnapping, § 5-11-102;
(F) Aggravated robbery, § 5-12-103;
(G) Delivering controlled substances to a minor as prohibited in § 5-64-410 [repealed].

Ark. Code Ann. § 16-93-1207(b)(1) (Supp. 2011) (emphasis added).

[3]Although the circuit court concluded that it lacked "jurisdiction" to expunge Sullivan's record, this was in error. The judgment and disposition order entered on October 6, 1997 in Sullivan's 1997 theft-of-property case, as well as the docket sheet, reflect that he was sentenced under the Act 531 of 1993, the Community Punishment Act. Sullivan's conviction for theft of property, pursuant to Arkansas Code Annotated section 5-36-103, is one of the "target offenses" for community punishment placement. *See* The Community Punishment Act, No. 531, 1993 Ark. Acts 1461 (specifically listing theft of property under section 5-36-103 as a part of the target group); *see also* Ark. Code Ann. § 16-93-1202(1)(*l*) (defining "Target Group" as "a group of offenders and offenses, determined to be, but not limited to, *theft*, theft by receiving, hot checks, commercial burglary, failure to appear, fraudulent use of credit cards, criminal mischief, breaking or entering, drug paraphernalia, driving while intoxicated, fourth or subsequent offense, *and all other Class C or D felonies which are not either violent or sexual* and which meet the eligibility criteria determined by the General

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that we will not consider an argument unless it has been properly developed. *Id.* We therefore decline to engage in an interpretation of the version of section 16-93-1207 in effect at the time Sullivan committed the crime in 1997.

In short, this court cannot engage in an interpretation of the 1997 version of the statute because Sullivan failed to object below to the application of the 2011 version and has failed to raise any arguments on appeal in relation to the 1997 version. We also cannot address the arguments that are actually raised by Sullivan on appeal in relation to the 2011 version of the statute, because to do so would be to issue an advisory opinion on a version of the statute that has no application to the instant case. As this court does not issue advisory opinions, we have no choice but to affirm. *See Bakalekos v. Furlow*, 2011 Ark. 505, ___ S.W.3d ___.

Affirmed.

Assembly to have significant impact on the use of correctional resources.") (emphasis added). The circuit court in 1997, therefore, had jurisdiction to accept Sullivan's guilty plea and sentence him under Act 531, and the circuit court in 2011 had jurisdiction to expunge his record for that conviction *provided that* Sullivan met the requirements for expungement under the statute.