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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 10-1125

RODNEY CHRISTOPHER CLINE APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 27, 2011 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, WESTERN DISTRICT [NO. CR-06-125, CR-05-1155, CR05-1046] HONORABLE DAVID BURNETT, JUDGE AFFIRMED AS MODIFIED

DOUG MARTIN, Judge

Appellant Rodney Cline appeals from the sentences he received as a result of the revocation of his suspended imposition of sentence (SIS) and probation, challenging the length of the sentences and the trial court's refusal to send him to drug court. We affirm the sentence as modified.

On February 22, 2006, Cline entered a plea of guilty to violating Arkansas's Hot Check Law, for which he received a sentence of sixty months' SIS. Cline also pled guilty to residential burglary, receiving sixty months' probation, and to criminal trespass, for which he was sentenced to ninety days in the county jail. On February 25, 2008, the State filed a petition to revoke Cline's SIS and probation, alleging that he had failed to pay restitution and

costs, failed to report, failed to complete a one-day tour of the Arkansas Department of Correction as ordered, and tested positive for marijuana and methamphetamine.

The circuit court held a hearing on the revocation petition on July 12, 2010. After the court found by a preponderance of the evidence that Cline had violated the terms and conditions of his probation and SIS, Cline called his grandmother, Nancy Puckett, to testify during the sentencing portion of the hearing. Puckett stated that she would like "to see the judge extend his probation or give him drug court, whichever he needs." Cline also asked the court for a "second chance," requesting that he "get another chance at probation or drug court."

The court ruled that it was not able to sentence anyone to drug court without the agreement of the prosecuting attorney and the probation officer. The court then sentenced Cline to sixty months for both offenses, with the sentences to run consecutively, and an additional sixty months' SIS. The court also ordered Cline to "mandatorily submit himself to the drug treatment program within the Department of Correction." The judgment and commitment order reflecting Cline's sentence was entered on July 12, 2010, and Cline filed a timely notice of appeal on August 5, 2010.

In his sole argument on appeal, Cline does not challenge the sufficiency of the evidence supporting the revocation of his SIS and probation. Rather, he complains that "his punishment of two consecutive terms of sixty months was unduly harsh and that drug court could have been used for a sentencing tool." Cline acknowledges, however, that his

sentences are within the statutory sentencing range for violation of the Arkansas Hot Check Law and for residential burglary.[1] He nevertheless argues that this court can reduce a sentence that "was a result of passion or prejudice or that was a clear abuse of discretion."[2] We are unable to reach the merits of his argument, as it is not preserved for appeal.

Although Cline argues that the court's sentencing decision was unduly harsh, Cline failed to object to the sentences at the time they were imposed. In *Ladwig v. State*, 328 Ark. 241, 942 S.W.2d 571 (1997), the supreme court held that "[a] defendant who makes no objection at the time sentence is imposed has no standing to complain of it." *Ladwig*, 328 Ark. at 246, 942 S.W.2d at 574 (citing *Williams v. State*, 303 Ark. 193, 794 S.W.2d 618 (1990)). Here, when the circuit court announced Cline's sentence at the end of the revocation hearing, Cline merely asked for an appeal bond and did not raise any objection to the sentences. Accordingly, Cline's argument regarding the perceived harshness is not preserved for appeal.

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[1] Cline's conviction under the Arkansas Hot Check Law, Arkansas Code Annotated section 5-37-302 (Repl. 2006), was a Class C felony, which carries a punishment range of three to ten years. Ark. Code Ann. § 5-4-401(a)(3) (Repl. 2006). Residential burglary is a Class B felony, Ark. Code Ann. § 5-39-201(a)(2) (Repl. 2006), punishable by five to twenty years. Ark. Code Ann. § 5-4-401(a)(3).

[2] Although we do not reach the merits of Cline's arguments, we note that the appellate courts are *not* free to reduce a sentence so long as the sentence is within the range of punishment contemplated by the legislature. *See Dooly v. State*, 2010 Ark. App. 591, 377 S.W.3d 471.

Cline also asserts that the trial court was incorrect in ruling that Cline could not be sentenced to drug court without the consent of the prosecution and the probation officer; however, this argument is also not preserved for appeal. While both Cline and his grandmother testified that they believed he should be given another chance in drug court, Cline again failed to object or to specifically request that the court sentence him to drug court at the time the court pronounced the sentence. When there is no objection to the sentence at the time of pronouncement, this court will not consider an argument on appeal pertaining the sentence. *See Neal v. State*, 298 Ark. 565, 769 S.W.2d 414 (1989).

We thus affirm the trial court's order sentencing Cline to prison. We are compelled, however, to correct a portion of the sentence. In its order sentencing Cline to the Arkansas Department of Correction, the circuit court included, as a "special condition" of its order imposing sentence, that Cline "shall complete mandatory drug treatment while in the ADC." This provision was incorporated into the Judgment and Commitment Order entered on July 12, 2010. Although Cline does not raise this as an issue on appeal, the circuit court's imposition of this special condition amounted to an illegal sentence.

Arkansas law is well settled that a challenge to an illegal sentence may be raised for the first time on appeal. *Campea v. State*, 87 Ark. App. 225, 189 S.W.3d 459 (2004). Moreover, the issue of an illegal sentence is an issue of subject-matter jurisdiction that this court can raise sua sponte, even if not raised on appeal and not objected to in the trial court. *Harness v. State*,

352 Ark. 335, 101 S.W.3d 235 (2003); *Wright v. State*, 92 Ark. App. 369, 214 S.W.3d 280 (2005).

In *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909, our supreme court held that the trial court imposed an illegal sentence when it attempted to require the appellant to undergo drug and alcohol treatment as a condition of his incarceration. In that case, the State filed a petition to revoke appellant Richie's probation. The court granted the revocation petition and, on the judgment and commitment order, sentenced Richie to ten years in the Arkansas Department of Correction and ordered him to submit to drug and alcohol treatment and counseling while in prison. *Richie*, 2009 Ark. 602, at 2–3, 357 S.W.3d at 911.

On appeal, Richie argued that the circuit court had imposed unlawful conditions on his sentence, and the supreme court agreed. Noting first that sentencing in Arkansas is entirely a matter of statute, the court looked to Arkansas Code Annotated section 5-4-104(d), which sets out authorized sentences and provides 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;
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> (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.

Id. at 7, 357 S.W.3d at 913.

The supreme court stated that a circuit court may certainly place conditions on a defendant when the court suspends the imposition of sentence or places the defendant on probation. *Id.* (citing Ark. Code Ann. § 5-4-303(a) (Repl. 2006)). The court determined, however, that "there is no similar provision in section 5-4-104(d) that . . . allow[s] a court to place specific conditions on a sentence of incarceration." *Id.* The court concluded as follows:

> Criminal statutes are to be strictly construed, with any doubts resolved in favor of the defendant. *See Brown v. State*, 375 Ark. 499, 292 S.W.3d 288 (2009); *Stivers v. State*, 354 Ark. 140, 118 S.W.3d 558 (2003). Moreover, no defendant convicted of an offense shall be sentenced otherwise than in accordance with our statutes. *See* Ark. Code Ann. § 5-4-104(d). Because no statute authorized the action taken, the circuit court in this case imposed an illegal sentence when it attempted to require Richie to undergo drug and alcohol treatment as a condition of his incarceration. To this extent, the sentence was illegal, and we remand to the circuit court with directions to strike the unlawful conditions and for the entry of a new judgment and commitment order consistent with this opinion.

Id. at 11-12, 357 S.W.3d at 915-16.

Richie clearly holds that a circuit court cannot require, as a "special condition" on a defendant's sentence, that the defendant undergo mandatory drug treatment and rehabilitation. As the *Richie* court noted, once a circuit court enters a judgment and commitment order, jurisdiction is transferred to the Department of Correction, and it is for the Department "to determine any conditions of incarceration, such as whether the defendant will undergo drug treatment." *Id.* The circuit court's special condition in this case thus constituted an illegal sentence, and while we affirm the revocation and the sentence in

general, we strike the "special condition" of the judgment and commitment order and modify the order to reflect that Cline is not required to complete mandatory drug treatment while in the Arkansas Department of Correction. *See Harness v. State*, *supra*.

Affirmed as modified.

HART and GRUBER, JJ., agree.