

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR10-723

CHASMUN F. MILLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered AUGUST 31, 2011

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CR-2003-725-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED AS MODIFIED

JOSEPHINE LINKER HART, Judge

On April 20, 2005, the circuit court sentenced Chasmun F. Miller to sixty months' imprisonment to be followed by a suspended imposition of sentence of sixty months for Class C felony possession of a controlled substance, cocaine. The court also sentenced Miller to thirty-six months' imprisonment for Class D felony second-offense possession of a controlled substance, marijuana. The State subsequently filed a petition to revoke, which the court granted.

Miller now appeals from the circuit court's revocation of the suspended imposition of sentences, asserting that both the first and second amended judgment and commitment orders issued from that revocation erroneously stated that upon revocation he was sentenced to fifteen years' imprisonment on each count rather than the five years announced by the court. Miller argues that the fifteen-year sentences are illegal because both exceed the maximum

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penalties of both offenses, a maximum of ten years for the Class C felony and a maximum of six years for the Class D felony. Ark. Code Ann. § 5-4-401(a)(4), (5) (Repl. 2006). This case has previously been remanded to the circuit court, and following that remand, a supplemental record on remand was lodged with this court showing that the circuit court entered on November 9, 2010, and on November 22, 2010, third and fourth amended judgment and commitment orders sentencing appellant to five years' imprisonment on each count. Given the correction, appellant received the relief he requested on appeal, so his point on appeal is moot.

We do note, however, that there is still a problem with the court's sentence on the Class D felony. According to the 2005 order, Miller was not sentenced to a suspended imposition of sentence on the Class D felony and was instead sentenced to thirty-six months' imprisonment. But even though Miller was not placed on a suspended imposition of sentence for the Class D felony, according to the third and fourth amended orders of 2010, the circuit court revoked a suspended imposition of sentence on that count and sentenced him to sixty months' imprisonment.

This court can raise the issue of an illegal sentence and review it even if it was not raised on appeal and not objected to in the circuit court. *Harness v. State*, 352 Ark. 335, 339, 101 S.W.3d 235, 237 (2003). As the Arkansas Supreme Court has stated, a "sentence is void or illegal when the trial court lacks the authority to impose it." *Donaldson v. State*, 370 Ark. 3, 6, 257 S.W.3d 74, 77 (2007). Moreover, "for purposes of appellate review, the issue of an illegal sentence is not solely whether it is within the prescribed statutory range, but whether

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the trial court had authority to impose the sentence.” *Id.* at 6, 257 S.W.3d at 77.

Sentencing is entirely a matter of statute. *Id.* at 7, 257 S.W.3d at 77; *Harness*, 352 Ark. at 339, 101 S.W.3d at 237. If a particular sentence pronounced by the court is not authorized by statute, the sentence is unauthorized and illegal. *Donaldson*, 370 Ark. at 7, 257 S.W.3d at 77. We note that a circuit court may revoke a suspended imposition of sentence if the court finds by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of the suspension. Ark. Code Ann. § 4-4-309(d) (Supp. 2009). We hold that because Miller was never given a suspended imposition of sentence on the Class D felony—and thus there were no conditions to violate—the circuit court was without authority to revoke a suspended imposition of sentence on the Class D felony. If the sentence is illegal and the error had nothing to do with guilt but only with the illegal sentence, we can correct the sentence in lieu of remanding. *Harness*, 352 Ark. at 339, 101 S.W.3d at 237. Accordingly, we correct Miller’s sentence to show that there was no revocation of a suspended imposition of sentence on the Class D felony.

Affirmed as modified.

VAUGHT, C.J., and GLOVER, J., agree.