

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-392

RICHARD JAMAL JACOBS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered November 2, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2010-1022]

HONORABLE JOHN N.
FOGLEMAN, JUDGE

REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

This case deals with a probation revocation. In September 2010, appellant pled guilty in Crittenden County Circuit Court case number CR-2010-1022 to possession of a controlled substance with intent to deliver and to simultaneous possession of drugs and firearms. He was placed on probation for a period of sixty months for these offenses. In November 2010, the State filed a petition to revoke appellant's probation alleging that appellant violated the conditions thereof by, *inter alia*, possessing marijuana with intent to deliver. After a revocation hearing in January 2011, the trial court found that appellant had violated the conditions of his probation and imposed consecutive terms of imprisonment totaling thirty-five years. This appeal followed.

Appellant concedes on appeal that the evidence is sufficient to support the trial court's finding that he inexcusably failed to comply with the conditions of his probation as to his conviction of possession of a controlled substance with intent to deliver in case CR-2010-



022, and he does not challenge the ten-year sentence imposed upon revocation of his probation for that offense. Instead, appellant's argument is directed entirely against the twenty-five-year sentence imposed upon revocation of his probation for simultaneous possession of drugs and firearms. He asserts that, because simultaneous possession of drugs and firearms is a Class Y felony, Ark. Code Ann. § 5-74-106(b) (Repl. 2005), the trial court in CR-2010-1022 lacked authority to place him on probation for that offense. Appellant is correct.

A sentence is void or illegal when the trial court lacks authority to impose it. *Thomas v. State*, 349 Ark. 447, 79 S.W.3d 347 (2002). Arkansas Code Annotated section 5-4-301(a)(1)(C) (Supp. 2011) prohibits a trial court from placing a defendant on probation for a Class Y felony. Although appellant brought no appeal from the order that ordered probation for a Class Y felony, allegations of a void or illegal sentence are treated in the same manner as questions of subject-matter jurisdiction in that they cannot be waived by parties. *Thomas v. State, supra*; *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003). However, the remedy for an illegal sentence is not dismissal of all related proceedings in the trial court or dismissal of the State's petition to revoke; if the original sentence is illegal, even though partially executed, the sentencing court may correct it. *Bangs v. State*, 310 Ark. 235, 835 S.W.2d 294 (1992); *Sisk v. State, supra*. Here, the judgment entered in CR-2010-1022 is facially invalid to the extent that it orders probation for the Class Y felony of simultaneous possession of drugs and firearms. Consequently, we reverse that part of the trial court's order



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in CR-2010-1022 ordering probation for that offense and remand the case for resentencing.

See Taylor v. State, 354 Ark. 450, 125 S.W.3d 174 (2003).

Reversed and remanded.

ABRAMSON and HOOFFMAN, JJ., agree.

C. Brian Williams, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.