

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR11-329

FRED O. WARREN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 4, 2012

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT,  
[NO. CR-07-50]

HONORABLE JOHN N.  
FOGLEMEN, JUDGE

AFFIRMED

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**CLIFF HOOFFMAN, Judge**

Appellant Fred Warren appeals from the trial court's order revoking his suspended imposition of sentence. On appeal, Warren argues that the sentence he received in the underlying case was illegal and that his case should be remanded for resentencing. We disagree and affirm.

On January 11, 2007, an information was filed charging Warren with possession of a controlled substance. An amended information was filed on May 23, 2007, asserting that Warren was a habitual offender and listing his four previous felony convictions. Warren pled guilty on December 7, 2007. As reflected in the transcript of Warren's sentencing on this date, Warren was informed that he was charged with possession of a controlled substance as a habitual offender, which carried a possible punishment of three to twenty years' imprisonment. Warren stated that he understood this and acknowledged that he had the



opportunity to discuss the charge and its consequences with his attorney. Warren also signed a guilty-plea statement filed on December 7, 2007, indicating that he was subject to imprisonment for a term ranging from 36 to 240 months. A judgment and commitment order was entered the same date reflecting that Warren was sentenced to 96 months' imprisonment and 120 months' suspended imposition of sentence (SIS). The order was not appropriately marked to indicate that Warren was sentenced as a habitual offender.

A petition for revocation was filed on July 9, 2010, alleging that Warren had violated the terms of his SIS. A revocation hearing was held on December 21, 2010. Warren moved to dismiss the petition to revoke because the sentence he received originally was an illegal sentence. Warren argued that he had pled guilty to a Class C felony, which has a sentencing range of three to ten years; however, he received a sentence of eight years' imprisonment and ten years' SIS. The court responded that it appeared Warren had been sentenced as a habitual offender, but Warren argued that the order was not marked to indicate that he was sentenced as a habitual offender. The trial court denied Warren's motion and subsequently revoked his SIS and sentenced him to twelve years' imprisonment. Warren filed a timely notice of appeal on December 30, 2010.

Warren timely filed his brief in this appeal on July 1, 2011. The State subsequently filed a motion to remand to settle the record, and this court granted the motion. On September 23, 2011, the circuit court entered a judgment and commitment order nunc pro tunc, reflecting that on December 7, 2007, Warren pled guilty to possession of a controlled substance and was sentenced as a habitual offender under Arkansas Code Annotated section



5-4-501(a) to 96 months' imprisonment and 120 months' SIS.

A sentence is void or illegal when the trial court lacks the authority to impose it. *State v. Fountain*, 350 Ark. 437, 88 S.W.3d 411 (2002). In Arkansas, sentencing is entirely a matter of statute. *Id.* Sentencing may not be other than in accordance with the statute in effect at the time of the commission of the crime. *Id.* Where the law does not authorize the particular sentence pronounced by the trial court, that sentence is unauthorized and illegal, and the case must be reversed and remanded. *Id.*

Warren argues that the original judgment and commitment order entered on December 7, 2007, which sentenced him to a total of 18 years' imprisonment and SIS, is a violation of the sentencing statute for Class C felonies. Arkansas Code Annotated section 5-4-401(a)(4) (Repl. 2006) provides that for a Class C felony, a defendant's sentence shall be not less than three years nor more than ten years. Warren requests that we remand the case to the trial court for resentencing.

As the State argues, however, the trial court's entry of the judgment and commitment order nunc pro tunc corrected the omission of habitual-offender status from the original judgment, based on the clear record showing that Warren was notified that he was both charged and sentenced as a habitual offender. A circuit court has the power to make "the record speak the truth" and can enter an order nunc pro tunc at any time to correct clerical errors in a judgment or order. *Grissom v. State*, 2009 Ark. 557. Arkansas Code Annotated section 5-4-501(a)(2)(D) (Repl. 2006) provides that a habitual offender with more than one but fewer than four prior felonies, who is convicted of a Class C felony, shall be sentenced



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to a term of imprisonment of not less than three years nor more than twenty years. Warren's sentence of eight years' imprisonment and ten years' SIS is within the habitual-offender range for a Class C felony. Thus, Warren's sentence was legal, and we affirm.

Affirmed.

GRUBER and GLOVER, JJ., agree.

*Richard West*, Public Defender, for appellant.

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