

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-646

OSCAR PEREZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 11, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT

[NOS. CR03-255; CR03-687; CR03-
914]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED AS MODIFIED

RAYMOND R. ABRAMSON, Judge

Appellant Oscar Perez received a suspended sentence for possession of marijuana with intent to deliver, possession of methamphetamine, possession of a defaced firearm, breaking and entering, and two counts of possession of drug paraphernalia. The State subsequently petitioned to revoke his sentence on all counts—except the possession of a defaced firearm count—on the basis that Perez had committed other criminal acts and had failed to pay restitution. After a hearing, the trial court granted the revocation petition and sentenced Perez to a total of thirty-one years' imprisonment on all the underlying counts—including the possession of a defaced firearm count. Perez appeals his sentence, arguing that, because the



State did not allege or argue for revocation on the possession of a defaced firearm count, the imposition of sentence on that count amounted to an illegal sentence.¹ We agree.

A sentence is void or illegal when the trial court lacks the authority to impose it. *Cross v. State*, 2009 Ark. 597, 357 S.W.3d 895. Here, the possession of a defaced firearm count was not included in the original or amended petitions to revoke; it was not recited by the State when the prosecutor informed the court of Perez's potential exposure if the petition was granted; and the court did not specify that count when rendering its oral ruling on the petition. As such, the trial court lacked the authority to revoke on that count, and the resulting sentence was illegal. Therefore, a modification of the judgment and commitment order revoking his sentence on that count is required. However, as this result will not change the revocation of the suspended sentences on the other counts or affect the length of the sentences imposed, we affirm the judgment and sentence upon revocation as modified to reflect that there has been no revocation of the suspended imposition of sentence on the possession of a defaced firearm count.

Affirmed as modified.

GRUBER and MARTIN, JJ., agree.

¹This is the third time this case has been before us. Counsel for Perez initially filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court, asking to be relieved as counsel. On April 6, 2011, we ordered rebriefing due to deficiencies in the brief. See *Perez v. State*, 2011 Ark. App. 262.

On rebriefing, counsel once again filed a no-merit brief, but this time he included an argument disputing the legality of his client's sentence—a potential issue of arguable merit. As a result, we ordered rebriefing in adversarial form. See *Perez v. State*, 2011 Ark. App. 733.



Cite as 2012 Ark. App. 250

David Dunagin, for appellant.

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