

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-266

DONALD LEWIS BURTON, SR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered AUGUST 29, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. CR2008-1435-1]

HONORABLE ROBIN F. GREEN,
JUDGE

AFFIRMED AS MODIFIED

CLIFF HOOFFMAN, Judge

Appellant Donald Burton appeals from the sentence he received as a result of the revocation of his probation. Burton argues that he received an illegal sentence due to the trial court's order for long-term drug treatment. We affirm the sentence as modified.

On August 17, 2009, Burton pled guilty to theft of property and was sentenced to forty-five days in the county jail and five years' probation. On December 8, 2010, the State filed a petition to revoke Burton's probation, alleging that he had committed the offense of possession of a controlled substance, had tested positive for THC, and had admitted to using marijuana. A revocation hearing was held on December 9, 2010, and Burton admitted to all of the allegations in the State's petition. The trial court revoked Burton's probation and sentenced him to four years' imprisonment, six years' suspended imposition of sentence (SIS), and long-term drug treatment while in the Department of Correction. Burton filed a timely notice of appeal. Burton's attorney subsequently filed a no-merit brief and a motion to



withdraw alleging that there were no nonfrivolous issues upon which an appeal could be based. This court ordered rebriefing in adversary form because Burton may have received an illegal sentence. *Burton v. State*, 2012 Ark. App. 49.

Burton’s judgment and commitment order reflected a “special condition” stating that “Defendant is to receive long term drug treatment while at the Department of Correction.” Upon rebriefing, Burton argues that the trial court lacked the authority to impose this condition. Arkansas law is well settled that a challenge to an illegal sentence may be raised for the first time on appeal. *Cline v. State*, 2011 Ark. App. 315. In *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909, the supreme court held that the trial court imposed an illegal sentence when it ordered the appellant to submit to drug and alcohol treatment as a condition of his incarceration. *Richie* holds that a trial court has no authority to place such conditions on sentences of incarceration. Thus, the special condition on Burton’s judgment and commitment order constitutes an illegal sentence. We affirm the revocation and the sentence of imprisonment and SIS; however, we strike the special condition and modify the judgment and commitment order to reflect that Burton is not required to receive long-term drug treatment while at the Department of Correction. See *Cline v. State*, 2011 Ark. App. 315.

Affirmed as modified.

PITTMAN and GRUBER, JJ., agree.

Matthew J. McWilliams, for appellant.

Dustin McDaniel, Att’y Gen., by: *Nicana C. Sherman*, Ass’t Att’y Gen., for appellee.