

**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. CACR12-439

JOHNNY EUGENE EARLS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** February 20, 2013

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DIVISION  
[NO. CR 2003-473]

HONORABLE J. MICHAEL  
FITZHUGH, JUDGE

REVERSED AND REMANDED

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**RITA W. GRUBER, Judge**

Johnny Eugene Earls appeals the circuit court’s sentencing order in this revocation case. He contends that the sentences exceed the allowable statutory range for the two underlying felonies and are therefore illegal. We agree and remand for resentencing.

It is well settled that an appellant may challenge an illegal sentence for the first time on appeal, even if he did not raise the argument below. *Donaldson v. State*, 370 Ark. 3, 257 S.W.3d 74 (2007). A void or illegal sentence is an issue of subject-matter jurisdiction. *Id.* In Arkansas, sentencing is entirely a matter of statute; a sentence is illegal when the law does not authorize the particular sentence. *McArty v. Hobbs*, 2012 Ark. 257, at 4.

The underlying offenses in this case were theft of property, a Class B felony, and possession of drug paraphernalia, a Class C felony. In 2003, Earls pleaded guilty to theft of property and was sentenced to ten years’ suspended imposition of sentence (SIS). He pleaded



guilty to possession of drug paraphernalia and was sentenced to two years' imprisonment in the Arkansas Department of Correction with an additional eight years' SIS. He was released from prison on October 21, 2010. In 2012, the circuit court revoked the suspended imposition of sentence in each felony upon finding that Earls had violated terms of the suspensions. Earls was sentenced to a term of fifteen years' imprisonment with an additional term of thirteen years' SIS for the theft conviction and to fifteen years' imprisonment with an additional thirteen years' SIS for the drug-paraphernalia conviction, the terms to run concurrently.

If a trial court revokes an SIS, it may enter a judgment of conviction and may impose any sentence upon the defendant that might have been imposed originally for the offense of which he was found guilty. Ark. Code Ann. § 16-93-308(g)(1)(A) (Supp. 2011). In 2001, when Earls committed theft of property, a Class B felony offense was punishable by a sentence of not more than twenty years. Ark. Code Ann. § 5-4-401(a)(3) (Repl. 2006). When he committed possession of drug paraphernalia in 2010, a Class C felony offense was punishable by not more than ten years. Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2006).

Earls was sentenced upon revocation to twenty-eight years for each offense, sentences which fall beyond the statutory maximum for both his Class B offense and Class C offense. We reverse and remand for resentencing consistent with the governing statutes.

Reversed and remanded.

PITTMAN and WHITEAKER, JJ., agree.

*Jones Law Firm, PLLC*, by: *Leon Jones, Jr.*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Rachel Hurst Kemp*, Ass't Att'y Gen., for appellee.