

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-13-626

PAUL SCOTT SINGLETON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered March 12, 2014

APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. CR-2010-99]

HONORABLE DENNIS CHARLES
SUTTERFIELD, JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Paul Scott Singleton appeals from the revocation of his probation. On appeal, he argues that the trial court erred by failing to either hold a hearing on the issue of his competency to stand trial or suspend the proceedings and order a mental evaluation. He also argues that the trial court erred by failing to give him credit for jail time served on his original sentence of incarceration. We affirm.

Because appellant does not challenge the sufficiency of the evidence at the revocation hearing to support the decision of the trial court, an extensive review of the facts is not necessary. In 2010, appellant pled no contest to a charge of Class A felony arson. He was sentenced to ninety-six months' probation. In May 2012, the State filed a petition to revoke his probation, citing several alleged violations. An amended petition was filed on July 12, 2012, which contained additional alleged violations.

During the first hearing on the petition to revoke, appellant moved for a mental evaluation. The proceedings were suspended, and the trial court entered an order for a mental-health evaluation on July 30, 2012. The evaluation was performed by Dr. Paul Deyoub. Based on the evaluation, Dr. Deyoub found that appellant, at the time of the evaluation, had the capacity to understand the proceedings against him and to assist effectively in his own defense. Dr. Deyoub also determined that appellant did not have a mental disease or defect.

Prior to the second hearing on the petition to revoke, appellant obtained new counsel. At the outset of the second hearing, appellant's new counsel made the following statement:

Well, at this point, Your Honor, may I renew my—that motion to have him—it's difficult to have him assist in his own defense. From my conversations with him, he does not understand the nature of the charges against him, the consequences of the charges against him, and it's been difficult to get a clarity or any kind of defense.

After an objection by the State, the trial court responded as follows:

Well it's my understanding that [the] evaluation was done, [and] the report was tendered saying he was fit to proceed. So I think that issue has already been adjudicated and so, okay. Are you ready then?

Testimony then commenced.

At the conclusion of the hearing, the trial court found that appellant had violated the terms and conditions of his probation. Appellant was sentenced to 360 months' imprisonment. The sentencing order reflects jail-time credit of 312 days. This appeal followed.

Appellant's first point on appeal is that the trial court erred by failing to either hold a hearing on the issue of his fitness to proceed after he contested the findings of the mental

evaluation or suspend the proceedings and order a mental evaluation when the issue of competency was raised. This point has not been preserved for review on appeal. Arkansas Code Annotated section 5-2-309 (Repl. 2013) provides that:

- (a) If the defendant's fitness to proceed becomes an issue, the issue of the defendant's fitness to proceed shall be determined by the court.
- (b) If neither party contests the finding of the report filed pursuant to 5-2-305, the court may make the determination under subsection (a) of this section on the basis of the report.
- (c) If the finding of the report is contested, the court shall hold a hearing on the issue of the defendant's fitness to proceed.

The trial court is not obligated to hold a hearing on the issue of competency when presented with an uncontradicted mental evaluation concluding that the defendant is fit to stand trial unless the findings of that evaluation are contested by either party. *Stevenson v. State*, 2010 Ark. App. 122. Nor is the trial court obligated to make further findings under such circumstances. *Id.* Although appellant contends in his brief that he challenged the findings of the mental evaluation by Dr. Deyoub, the record reveals that he did not. Appellant never mentioned the report by Dr. Deyoub and, far from challenging the findings in the report, counsel's statement is phrased as though no evaluation had previously been done. As the findings in the uncontradicted evaluation by Dr. Deyoub were not challenged, no hearing was necessary.

At most, counsel's statements to the trial court could be viewed as a motion for a second evaluation, as the first motion for an evaluation was the only motion that could reasonably be "renewed" at that point in the case. Even if this court were to construe the

statements as a motion for a second evaluation, appellant failed to obtain a ruling from the trial court on the issue. Failure to obtain a clear ruling on an issue from the trial court precludes appellate review of the issue. *Mashburn v. State*, 2012 Ark. App. 621.

Appellant's second point on appeal is that the trial court erred when it failed to give him credit for time served on his original sentence of incarceration. This argument cannot be made on direct appeal. Appellant argues that the failure of the trial court to give him jail-time credit makes his sentence illegal. He is mistaken. An illegal sentence is one that the trial court lacked the authority to impose. *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909. When the sentence imposed is within the maximum prescribed by law, the sentence is not illegal, because the court had the authority to impose it. *Id.* Appellant originally pled no contest to Class A felony arson, which carries a possible sentence of not less than six nor more than thirty years' imprisonment. Ark. Code Ann. § 5-4-401 (Repl. 2006). Although he received the maximum sentence, appellant's punishment is within the statutory range. Therefore, the trial court had the authority to impose the punishment, and the sentence is not illegal.

Our supreme court has stated that a request for jail-time credit is a request for a modification of a sentence imposed in an illegal manner. *Morgan v. State*, 73 Ark. App. 107, 42 S.W.3d 569 (2001). A claim that a sentence was imposed in an illegal manner must be raised in a petition filed with the circuit court under Arkansas Rule of Criminal Procedure 37. *Id.* No such petition was filed in this case; therefore, the issue of jail-time credit cannot be considered in this appeal. Appellant is not without a remedy, as he may file a petition under Rule 37 of the Arkansas Rules of Criminal Procedure within sixty days of the mandate

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handed down by this court. Ark. R. Crim. P. 37.2(c)(ii) (2013).

Affirmed.

PITTMAN and BROWN, JJ., agree.

Eastman Law Office, PLLC, by: *Samuel F. Eastman*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Eileen W. Harrison*, Ass't Att'y Gen., for appellee.