Cite as 2009 Ark. App. 595

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR09-170

Opinion Delivered 16 SEPTEMBER 2009

RHATEZ DEMORE FURLOW, APPELLANT	APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [NO. CR-07-1466]
V.	THE HONORABLE DAVID BURNETT, JUDGE
STATE OF ARKANSAS, APPELLEE	AFFIRMED

D.P. MARSHALL JR., Judge

This revocation case is about a perceived discrepancy between the circuit court's pronounced sentence at the hearing and its imposed sentence in the judgment and commitment order. Rhatez Furlow pleaded guilty to burglary and theft, both class "C" felonies that carried a maximum of ten years' imprisonment each. Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2006); Ark. Code Ann. § 5-36-103(b)(2) (Supp. 2009); Ark. Code Ann. § 5-39-201(b)(2) (Repl. 2006). The court gave Furlow five years' supervised probation for the burglary and suspended imposition of a five-year sentence for theft. Less than three months later, the State petitioned to revoke based (among other things) on new charges of burglary and theft at local schools.

At the end of the revocation hearing, the court sentenced Furlow to twenty years' imprisonment: "I don't take breaking into schools very lightly, and the defendant will be

sentenced to twenty years in the Department of Correction." The judgment reflected ten years on theft consecutive to ten years on burglary.

Two preliminary points. First, Furlow does not make a sufficiency challenge. Second, Furlow calls his sentence illegal because, he says, the trial judge did not exercise discretion when imposing consecutive sentences. We disagree. The court's words in sentencing—"I don't take breaking into schools very lightly"—show discretion exercised based on the nature of Furlow's actions. *E.g.*, *Love v. State*, 324 Ark. 526, 530, 922 S.W.2d 701, 704 (1996); Ark. Code Ann. § 5-4-403(a) (Repl. 2006).

In his main argument, Furlow contends that the in-court pronouncement must prevail when it is contradicted by the judgment and commitment order. He says the trial court's pronouncement of "twenty years" contradicts the judgment, which ordered ten years for theft consecutive to ten years for burglary. We doubt our jurisdiction over Furlow's discrepancy argument, for he did not object below to his sentences being imposed consecutively. *Brown v. State*, 326 Ark. 56, 60, 931 S.W.2d 80, 83 (1996).

Even if preserved, Furlow's argument lacks merit for several reasons. Our law gives the circuit court leeway to modify a sentence between pronouncement and judgment. *Bush v. State*, 90 Ark. App. 373, 377–78, 206 S.W.3d 268, 271 (2005). Furlow incorrectly relies on *Turner v. State*, 88 Ark. App. 40, 194 S.W.3d 225 (2004), for the contrary proposition. *Bush*, 90 Ark. App. 373, 378, 94 S.W.3d 268, 271 (2005) (expressly rejecting Furlow's reading of *Turner*). Thus, any such discrepancy between the trial judge's sentencing pronouncement and the judgment and commitment order makes no legal difference.

And we see no discrepancy. In a revocation, the court may order any sentence that it could have imposed originally. Ark. Code Ann. § 5-4-309(g)(1)(A) (Supp. 2009). When he committed burglary and theft, Furlow faced up to twenty years' imprisonment. At the revocation hearing, the court pronounced twenty years—a sentence only possible if the court was imposing consecutive sentences. The judgment reflected this.

Affirmed.

HART and GLOVER, JJ., agree.

***C. Brian Williams*, for appellant.**

***Dustin McDaniel*, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.**