

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-115

ROBERT EUGENE CHEATER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 6, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NOS. CR-2006-1074, CR-2006-1335]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Robert Cheater appeals the Sebastian County Circuit Court's order revoking his two suspended sentences. Upon revocation, the trial court ordered two imprisonment sentences to run consecutively, although Cheater's original imprisonment and suspended sentences were ordered to run concurrently. On appeal, he argues that the trial court's sentences violated his due-process rights and that the sentences are illegal. We affirm.

Cheater does not appeal the sufficiency of the evidence supporting the revocation of his suspended sentences; therefore, a minimal factual history is necessary. In 2006, Cheater pled guilty to two counts of driving while intoxicated (fourth offenses) and one count of driving on a suspended license. For each of the driving-while-intoxicated counts, Cheater was

sentenced to a two-year term of imprisonment and a four-year suspended sentence, to run concurrently. His “Terms and Condition of Suspended Sentence,” which included both offenses, provided:

THE VIOLATION OF ANY ONE OF THESE TERMS AND CONDITIONS CAN RESULT IN YOUR BEING SENTENCED TO IMPRISONMENT IN THE DEPARTMENT OF CORRECTION[] FOR A TERM OF NO MORE THAN 4 YEARS AND/OR FOUND GUILTY OF CONTEMPT OF COURT AND SUBJECT TO PUNISHMENT AS ORDERED BY THE COURT.

Cheater served the two concurrent two-year terms of imprisonment. On October 19, 2009, the State filed a petition to revoke Cheater’s suspended sentences, alleging that he failed to pay court-ordered fines, court costs, and fees and that he committed the offense of manslaughter on October 11, 2009. After a revocation hearing, the trial court found that Cheater violated the terms of his suspended sentences, revoked his suspended sentences on both of the DWI convictions, and sentenced him to four years’ imprisonment on each count, to run consecutively.

Cheater’s primary point on appeal is that the trial court violated his due-process rights when it imposed the two consecutive imprisonment terms after revoking his suspended sentences. However, we cannot reach the merits of this argument because the trial court did not make a ruling on it. Prior to trial when Cheater’s counsel argued “there is no indication anywhere in the pleadings or the file or anything that the [two] four[-]year [sentences] would be consecutive,” the trial court’s only response was “thank you.” At the conclusion of the trial when Cheater’s counsel’s due-process argument was that the court had to “comply with what

is in the Arkansas statutes and sentences have to be concurrent,” the trial court did not make a ruling. Instead, the trial court found that Cheater had violated the terms and conditions of his release, offering no findings or comments whatsoever on any constitutional issue. It has been held numerous times that the burden of obtaining a ruling is on the movant, and objections and questions left unresolved are waived and may not be relied upon on appeal. *Richardson v. State*, 292 Ark. 140, 143, 728 S.W.2d 189, 191–92 (1987).

Cheater’s second argument on appeal is that his sentence is illegal. While Cheater did not raise this argument below (and his argument on appeal is minimally developed at best), it is well settled that an appellant may challenge a void or illegal sentence for the first time on appeal, even if he did not raise the argument before the trial court. *Ward v. State*, 2010 Ark. App. 79, at 3. We have made it clear that we view the issue of a void or illegal sentence as one of subject-matter jurisdiction, which may be reviewed on appeal. *Ward*, 2010 Ark. App. 79, at 3. A sentence is void or illegal when the trial court lacks the authority to impose it. *Ward*, 2010 Ark. App. 79, at 3.

Cheater argues that the trial court’s sentence is illegal because upon revocation it ordered consecutive sentences when it originally ordered concurrent sentences. This argument lacks merit based upon our supreme court’s holding in *Maldonado v. State*, 2009 Ark. 432. In *Maldonado*, the supreme court held that the trial court upon revocation was authorized by statute to not only modify the original order sentencing a defendant to probation and impose any sentence that the defendant originally could have been given, but also was authorized to

run multiple sentences of imprisonment for multiple offenses consecutively, including those where concurrently run probation sentences had been revoked. *Maldonado*, 2009 Ark. 432, at 4 (citing Ark. Code Ann. §§ 5-4-301(d)(2)(A) (Supp. 2009); 5-4-403(a) (Repl. 2006); 5-4-309(f)(1)(A) (Repl. 2006), now codified at 5-4-309(g)(1)(A) (Supp. 2009)).

The same holding applies in the instant case. Upon revocation of Cheater's concurrent suspended sentences, the trial court was authorized by statute to modify the original order and impose any sentence that Cheater originally could have been given *and* to order that those sentences run consecutively. *Maldonado*, 2009 Ark. 432, at 4. The sentence range for the offense of driving while intoxicated (fourth offense) is one to six years' imprisonment. Ark. Code Ann. § 5-65-111(b)(3)(A) (Supp. 2009). Upon revocation, Cheater (who pled guilty to two counts of driving while intoxicated and previously served both two-year imprisonment terms) faced a maximum sentence of eight years' imprisonment, which is what the trial court imposed. Therefore, the sentences imposed by the trial court are not illegal. *Maldonado*, 2009 Ark. 432, at 4.

For the reasons stated herein, we affirm Cheater's revocation.

Affirmed.

PITTMAN and HART, JJ., agree.