

Cite as 2019 Ark. App. 249

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-18-221

ANDREW LOGAN WILSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

OPINION DELIVERED: MAY 1, 2019

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NOS. 18CR-10-1541; 18CR-12-600;
18CR-15-762]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED AS MODIFIED

ROBERT J. GLADWIN, Judge

Andrew Logan Wilson appeals the December 4, 2017 sentencing order of the Crittenden County Circuit Court, arguing that the consecutive sentence imposed by the order is illegal. We agree and affirm as modified.

I. Procedural History

In 2011, Wilson pled guilty to residential burglary and was sentenced to sixty months' probation. His probation was revoked on September 14, 2012, and he was sentenced for residential burglary, theft of property, and possession of a firearm by a felon to 120 months' imprisonment and 120 months' suspended imposition of sentence (SIS) after a negotiated guilty plea. On October 30, 2015, Wilson pled guilty to delivery of a counterfeit substance, and he was sentenced to sixty months' SIS.

The State petitioned to revoke Wilson's SIS in November 2017, and after a hearing, the circuit court found that Wilson had inexcusably failed to comply with the conditions of

probation and SIS in his three cases, and he was sentenced as follows: CR-15-762 (delivery of a counterfeit substance), 120 months' imprisonment; CR-12-600 (theft; felon with a firearm), seventy-two months' imprisonment and 120 months' SIS; CR-10-1541 (residential burglary), 120 months' imprisonment. These sentences were ordered to be run consecutively.

Wilson filed a timely notice of appeal, and his counsel filed a motion to withdraw and a no-merit brief based on *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) (2017) of the Rules of the Arkansas Supreme Court and Court of Appeals. However, this court ordered rebriefing in adversarial form to address whether Wilson's sentencing was in violation of Arkansas Code Annotated section 5-4-307 (Repl. 2013). See *Wilson v. State*, 2019 Ark. App. 7, 569 S.W.3d 340.

II. *Consecutive Versus Concurrent Sentences*

Section 5-4-307(b)(2) provides that “[t]he period of a suspension or probation also runs concurrently with any federal or state term of imprisonment or parole to which a defendant is or becomes subject to during the period of the suspension or probation.” Accordingly, suspended sentences for one or more crimes must run concurrently with terms of imprisonment imposed for separate crimes. *Walden v. State*, 2014 Ark. 193, 433 S.W.3d 864.

Wilson's sole argument on appeal is that the circuit court committed error by imposing SIS consecutively rather than concurrently to other counts receiving

imprisonment in the Arkansas Department of Correction.¹ The State concedes that Wilson was sentenced to SIS for possession of a firearm consecutively to imprisonment for residential burglary, theft of property, and delivery of a counterfeit substance; thus, Wilson's sentence is illegal to the extent that his SIS was ordered to run consecutive to the terms of imprisonment. Therefore, Wilson's sentence is modified to reflect that the SIS imposed shall run concurrently rather than consecutively, and all other terms shall remain unchanged.

Affirmed as modified.

VIRDEN and WHITEAKER, JJ., agree.

S. Butler Bernard, Jr., for appellant.

One brief only.

¹The issue of an illegal sentence cannot be waived by the parties and may be addressed for the first time on appeal. *Reyes v. State*, 2015 Ark. App. 55, 454 S.W.3d 279.