Cite as 2023 Ark. App. 487

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-23-67

JARVIS DILLARD APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered November 1, 2023 APPEAL FROM THE DESHA COUNTY CIRCUIT COURT [NO. 21ACR-14-104] HONORABLE ROBERT B. GIBSON III, JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED; REMANDED WITH INSTRUCTIONS

BART F. VIRDEN, Judge

Appellant Jarvis Dillard appeals from the Desha County Circuit Court's revocation of his suspended imposition of sentence (SIS) in case No. 21ACR-14-104.[1] Dillard's counsel has filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(b), along with a motion to withdraw as counsel asserting that there is no issue of arguable merit on appeal. The clerk of this court served Dillard with a copy of his counsel's brief and notified him of his right to file pro se points for reversal. He has not

[1]There is a companion case dealing with the revocation of Dillard's SIS in case No. 21ACR-15-14. The trial court held one revocation hearing on the State's petitions in both cases. Dillard filed separate appeals. We are today handing down an opinion with respect to the companion case as well. *See Dillard v. State*, 2023 Ark. App. 488.

filed any points. We affirm the revocation decision and grant counsel's motion to withdraw; however, we remand for correction of a clerical mistake in the sentencing order.

I. *Background*

In February 2016, Dillard pleaded guilty to commercial burglary, theft of property, and possession of a firearm by certain persons. Dillard was sentenced to an aggregate term of twenty years' imprisonment followed by an eight-year SIS with respect to the possession-of-a-firearm conviction. Dillard agreed to be bound by certain terms and conditions in connection with his SIS, including that he would not consume any controlled substances and would not commit any felony, misdemeanor, or other criminal offense punishable by confinement in jail or prison.

In December 2021, the State filed a petition to revoke alleging that Dillard had violated the terms and conditions of his SIS by committing new crimes and testing positive for controlled substances. Specifically, the State alleged that on November 12, 2021, Dillard committed manslaughter and second-degree criminal mischief; he tested positive for methamphetamine, amphetamines, and marijuana; and he admitted using methamphetamine shortly before November 12.

At the revocation hearing, the State presented evidence that on November 12, 2021, Dillard pulled into the Walmart parking lot in Monticello because he needed to get gas and claimed to have gotten dizzy. When he began to feel better, he started to back out of the parking space, and a customer honked her horn at him. That customer testified that it appeared as though Dillard then "floored it" and caused his car to spin around in a circle.

He hit several other cars, resulting in $5,000 in property damage, and he tragically struck and killed another customer, Esther Hudson, who had been loading groceries into her car.

A urine test administered by Stephanie Harris, Dillard's probation officer, revealed that Dillard was positive for methamphetamine, amphetamines, and marijuana. She said that methamphetamine typically stays in a person's system for three days, while marijuana typically stays for approximately thirty days. A blood test at the hospital revealed that Dillard was positive for marijuana.

In interviews with police, Dillard said that he took medication for high blood pressure but not that day; that he has documented anxiety issues; that he had snorted methamphetamine two to four days before the incident; and that he had gotten very little sleep the night before. After the State rested, defense counsel asked that the petition to revoke be dismissed only as to the allegation of manslaughter because Dillard's actions were perhaps negligent, but not reckless. Defense counsel, however, stipulated to the fact that Dillard had consumed controlled substances. The motion to dismiss was denied.

Dillard took the stand and admitted that he had used controlled substances in the days leading up to the incident but insisted that he was not still under the influence of any drug when his car struck and killed Hudson. He claimed to have had four other such "episodes" during which he had felt dizzy, his heart had fluttered, and he had once passed out. Dillard further stated that he had simply "panicked" when the customer honked her horn, he had thought he was hitting the brake, but he had obviously pushed the gas pedal instead. Defense counsel again moved to dismiss, but the trial court denied the motion.

The trial court revoked Dillard's SIS and sentenced him to ten years' imprisonment to be served consecutively with case No. 21ACR-15-14.[2] Dillard filed a notice of appeal from the revocation decision. Defense counsel has moved to withdraw from representation and filed a no-merit brief.

Rule 4-3(b) of the Rules of the Arkansas Supreme Court requires the argument section of a no-merit brief to contain a list of all rulings adverse to the defendant made by the trial court on all objections, motions, and requests with an explanation as to why each is not a meritorious ground for reversal. Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all of the proceedings. *Hill v. State*, 2023 Ark. App. 381.

II. *Discussion*

A. Sufficiency of the Evidence

To revoke a suspended sentence, the State must prove that the defendant violated a condition of the suspended sentence. *Mathis v. State*, 2021 Ark. App. 49, 616 S.W.3d 274. The State does not have to prove every allegation in its petition, and proof of only one violation is sufficient to sustain a revocation. *Id.* The State bears the burden of proving a violation by a preponderance of the evidence, but evidence that is insufficient for a criminal

[2]While the trial court clearly stated from the bench that Dillard's sentences in case Nos. 21ACR-14-104 and 21ACR-15-14 would run consecutively, the sentencing order with respect to the former case does not reflect that decision. The box for "consecutive" was not checked, and the space for the case number to which the sentence is to be served consecutively was left blank. We, therefore, remand with instructions to correct the sentencing order. *See, e.g.*, *Lawrence v. State*, 2020 Ark. App. 554, 614 S.W.3d 488.

conviction may be sufficient for revocation of a suspended sentence. *Lawrence v. State*, 2020 Ark. App. 285, 600 S.W.3d 670. On appeal, we will affirm a trial court's revocation of a suspended sentence unless the decision is clearly against the preponderance of the evidence. *Id.* Furthermore, because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial court's superior position. *Id.*

The trial court found that the State had proved all of the grounds alleged in the petition to revoke. Even disregarding the violation involving Dillard's commission of manslaughter and criminal mischief, Dillard told the police in his interviews that he had used drugs in the days before the incident; Dillard's counsel stipulated to his drug use at the hearing; Dillard took the stand and admitted having used drugs while on a suspended sentence; and two drug tests confirmed that Dillard had consumed controlled substances. This one violation of the terms and conditions of Dillard's SIS supports the revocation decision. *Gonzales v. State*, 2020 Ark. App. 219, 599 S.W.3d 341. We hold that there is no merit to an appeal based on the sufficiency of the evidence.

B. Adverse Evidentiary Rulings

A trial court has broad discretion in evidentiary rulings, and we will not reverse a trial court's ruling on the introduction of evidence unless the lower court has abused that discretion. *Jones v. State*, 2012 Ark. App. 69, 388 S.W.3d 503. Moreover, the rules of evidence do not strictly apply in probation-revocation proceedings. *Whitmore v. State*, 2018 Ark. App. 44, 539 S.W.3d 596.

While Patrolman Ted Williams with the Monticello Police Department was testifying, defense counsel asked him on cross-examination whether pulling one's vehicle off the road was the safe thing to have done if he was having an episode. The State objected that "episode" is too vague a term, and the trial court sustained that objection.

Harris testified that she had administered a sixteen-panel RediCup urine drug test to Dillard. Defense counsel objected that the results would be hearsay and that there had been no evidence regarding the accuracy of those tests. The trial court then questioned the witness regarding the test's accuracy and overruled the objection, being satisfied that the type of test is routinely administered and relied on by probation officers for revocation purposes. The trial court did not rule on the hearsay aspect of the objection.

Agent James Slaughter with the Monticello Police Department's Drug Task Force testified that he performed a drug-influence evaluation on Dillard and that his opinion was that Dillard was under the influence of a CNS (central nervous system) stimulant at the time of the incident and was too impaired to have been operating a motor vehicle. Defense counsel asked on cross-examination whether a blood test was a more objective test than the one administered by Slaughter. Slaughter answered no, yet defense counsel asked again whether the blood test, which was positive for marijuana only, was a more objective test. The State objected on the basis that the question had already been asked and answered, and the trial court agreed.

During Dillard's testimony, the State asked him on cross-examination whether he had gotten angry after another driver honked at him, and Dillard denied having been angry.

Defense counsel then objected, stating that there had been no evidence that Dillard was angry at anyone that day. The trial court allowed the question, which had already been answered, and agreed with the prosecutor's suggestion that he "move along" with his questions.

We hold that defense counsel has complied with the no-merit requirements by adequately explaining why the adverse rulings on the objections set forth above do not present any nonfrivolous issue for appeal.

C. Legality of the Sentence

At sentencing, defense counsel remarked that he did not think there was any evidence presented that would warrant sentencing Dillard to twenty years, which was his total exposure on the underlying offenses in both case Nos. 21ACR-14-104 and 21ACR-15-14. The trial court sentenced Dillard to ten years' imprisonment in this case.

When a trial court revokes a defendant's SIS and enters a judgment of conviction, it has discretion to impose any sentence on 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. 2021); *Goldsmith v. State*, 2023 Ark. App. 77, 660 S.W.3d 858. If a sentence is within the limits set by the legislature, the appellate court is not at liberty to reduce it. *Id.*

The offense for which Dillard was placed on an SIS in this case was his felon-in-possession-of-a-firearm conviction. Ark. Code Ann. § 5-73-103(a)(1) (Supp. 2021). It is a Class B felony. Ark. Code Ann. § 5-73-103(c)(1). As a habitual offender with more than one but fewer than four convictions, Dillard was subject to serving a term of not less than five

years nor more than thirty years. Ark. Code Ann. § 5-4-501(a)(2)(C) (Supp. 2021). Dillard had been sentenced to twenty years originally, so he could be sentenced to a term of up to ten years. Here, the trial court sentenced him to ten years' imprisonment, to be served consecutively to the sentence in case No. 21ACR-15-14.[3] The sentence is within the statutory limits. Moreover, the trial court was permitted to order that multiple sentences of imprisonment for multiple offenses be run consecutively, including those where an SIS has been revoked. Ark. Code Ann. § 5-4-403(a) (Repl. 2013); *Todd v. State*, 2016 Ark. App. 270, 493 S.W.3d 350. We agree with counsel that there is no merit to an appeal with regard to Dillard's sentence.

Affirmed; motion to withdraw granted; remanded with instructions.

GLADWIN and BARRETT, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

One brief only.

[3]Again, we remand with instructions for the trial court to correct the clerical mistake in the sentencing order as described in footnote 2.