

Cite as 2023 Ark. App. 509  
**ARKANSAS COURT OF APPEALS**  
DIVISION III  
No. CR-23-122

MELVIN LAMAR JOHNSON  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered November 8, 2023

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NOS. 18CR-20-654 & 18CR-21-974]

HONORABLE DAN RITCHEY, JUDGE  
AFFIRMED

---

**BART F. VIRDEN, Judge**

Melvin Lamar Johnson appeals the Crittenden County Circuit Court’s revocation of his probation and suspended imposition of sentence (SIS.) On appeal, Johnson propounds four points for reversal: (1) the circuit court erred by partly basing the revocation on a violation that was not alleged in the State’s petition to revoke; (2) there was insufficient evidence to revoke because the State did not prove by a preponderance of the evidence that he committed third-degree domestic battery; (3) Johnson’s sentence in case number 18CR-21-974 is illegal and must be modified; and (4) Johnson is entitled to 176 days of jail credit, from his arrest on June 7 through the date of his hearing on November 29, 2022. We affirm.

*I. Relevant Facts*

On March 28, 2022, the Crittenden County Circuit Court entered Johnson’s statement that he pleaded guilty to second-degree battery in case number 18CR-20-654 and

second-degree domestic battery in case number 18CR-21-974. Johnson was sentenced to sixty months' probation on the second-degree-battery charge (18CR-20-654) and sixty months' SIS on the second-degree domestic-battery charge (18CR-21-974). The sentencing order bore both case numbers, and Johnson was ordered to pay court costs and fees of \$590 and \$250 in fines. The costs and fees were not specifically assigned to either case. Regarding his probationary case, 18CR-20-654, Johnson signed a document titled "CONDITIONS OF PROBATION OR SUSPENDED IMPOSITION OF SENTENCE." The terms included maintaining employment or enrolling in an educational program, obeying all laws and court orders, not possessing firearms, abstaining from using alcohol or controlled substances, refraining from associating with convicted felons or criminals, paying court-ordered financial obligations (fines and court costs) and supervision fees unless exempted, submitting to treatment and counseling, submitting to search or seizure, and cooperating with the supervising officer or the circuit court.

On November 15, 2022, the State filed a petition for revocation of probation and SIS in both 18CR-21-974 and 18CR-20-654 alleging that Johnson had failed to pay his fines, costs, and fees in a timely manner; live a law-abiding life; and meet with his probation officer; and on May 12, he committed the new offense of third-degree domestic battery.

On November 29, the circuit court held a hearing on the petition. Preliminarily, the court took judicial notice of the payment registry showing that Johnson had not made any payments toward fines, fees, or costs. Johnson stipulated that he had been incarcerated on a new charge since his arrest on June 7.

Officer Cohshun Odom of the West Memphis Police Department testified that on May 12, he was dispatched to 2804 South Grove to investigate a report of a domestic disturbance. When he arrived at the address, Officer Odom saw Tammy Davis and a man later identified as Johnson standing in the front yard. When Johnson saw the police officer, he “took off running north.” Officer Odom was not able to locate Johnson, and he returned to the home to speak with Davis. Officer Odom testified that he noticed Davis had “a massive amount of swelling to the point where her eye was closing above her right eye,” and he called an ambulance. Davis was transported to the hospital, and photographs of Davis’s injury were admitted into evidence.

Johnson moved to dismiss the revocation, asserting that he was not required to begin making payments toward fines, costs, and fees until late April, and he was arrested shortly thereafter in June, which was not sufficient to prove that he failed to pay fines, fees, and costs. Additionally, Johnson argued that there was insufficient evidence that he had failed to lead a law-abiding life, and there was no testimony that anyone saw him strike Davis or that he had failed to report to his probation officer. The court denied the motion as to the nonpayment issue, finding that “he did have two months where he could have made some payment. No payment made, no indication as to explanation for why not.” The court granted the motion to dismiss regarding Johnson’s alleged failure to meet with his probation officer. The circuit court denied the motion to dismiss the failure-to-live-a-law-abiding-life and new-charges grounds for revocation.

Johnson testified that he did not pay his fines, costs, and fees as ordered because he had a death in the family and “was going through some stuff,” which he reported to his probation officer. Johnson testified that he had difficulty obtaining his driver’s license and birth certificate, which delayed finding employment. Later, Johnson clarified that he had a driver’s license that was current through February 2024, but he had lost it. Johnson denied battering Davis and stated that on May 12, Davis had been drinking and had fallen several times, injuring herself. Johnson had helped her walk back home, and he explained that Davis was confused and had accused him of hitting her. Johnson testified that he heard the police sirens, and when he saw the police vehicle approaching the house, he ran. When questioned why he ran, Johnson stated that he was on probation and panicked. Johnson admitted that one of the past battery charges in this revocation petition also involved Davis.

Counsel renewed the motion to dismiss, asserting that Johnson could not pay his fines, costs, and fees because “he had some extenuating circumstances due to a death in the family, which he indicates he did report to his probation officer.” Counsel asserted that there was no “direct evidence as to how the swollen eye occurred and he had nothing to do with it.” The State responded that the probation officer was “here, and she wasn’t called as a witness to validate anything that he has stated.”

The circuit court ruled that

with respect to the nonpayment of fines, costs, and fees, at the time of his plea, Mr. Johnson agreed to make these payments on a regular and timely basis. He has indicated that he was unemployed, but at least there’s an indication from the Court’s point of view that when he made the agreement, he was expecting he was gonna make payments. He did not make any payments during the first couple of months when

he—before he was incarcerated. I am gonna find there is sufficient evidence there to find that he violated that condition[.]

The court ruled that the State also met the burden of proving by a preponderance of the evidence that Johnson failed to lead a law-abiding life by fleeing the scene, and he committed the new offense of domestic battery on May 12. The court ruled that

[i]t is clear that Mr. Johnson fled the scene. He said he saw the officer. He said he ran because he was on probation. That's clearly a violation of leading a law-abiding life as a probationer. As to his testimony about the circumstances of the alleged incident involving Miss Davis ~ I believe is her name ~ I find that his testimony on that issue is not credible. It's clear that she experienced some significant injury requiring medical attention.

The circuit court granted the petition to revoke. Johnson was sentenced as a habitual offender to seventy-two months' incarceration in the Arkansas Department of Correction on 18CR-20-654, to run concurrently with seventy-two months' incarceration on 18CR-21-974, followed by forty-eight months' SIS, plus costs and fees. Johnson timely filed his notice of appeal, and this appeal followed.

## II. *Discussion*

### A. *Revocation*

Johnson contends on appeal that he was not given notice that the petition for revocation was based, in part, on his failure to lead a law-abiding life by fleeing from the police officers. Additionally, Johnson asserts that there was no evidence supporting the circuit court's finding that he was the cause of Davis's injuries. Johnson's arguments fail.

When a circuit court bases its decision on multiple independent grounds and an appellant challenges only one of those grounds on appeal, we can affirm without addressing

the merits of the argument. *Young v. State*, 2018 Ark. App. 517, at 3, 563 S.W.3d 599, 600–01. Here, the circuit court based its decision to revoke Johnson’s probation on two independent grounds: (1) that he failed to pay his court-ordered fines, fees, and costs, and (2) he failed to live a law-abiding life and committed a new crime. On appeal, Johnson does not challenge the circuit court’s finding that he inexcusably failed to pay his court-ordered fines, fees, and costs. Because Johnson failed to challenge the circuit court’s alternative ground for revocation on appeal, we must affirm the circuit court’s revocation. *See id.*

#### B. Conditions of SIS and Probation

Next, Johnson argues that the circuit court imposed illegal conditions regarding Johnson’s SIS. He asserts that certain conditions are only allowable in probation cases in which supervision by a probation officer is part and parcel of the conditional, supervised release. The provisions included in the form titled “CONDITIONS OF PROBATION OR SUSPENDED IMPOSITION OF SENTENCE” Johnson claims are at issue are as follows: maintaining employment and/or education that is approved by a supervising officer or the court, submitting to random drug testing at the discretion of his supervising officer or the court, associating with people specifically prohibited by the supervising officer or the court, paying monthly supervision fees unless exempted, submitting to treatment and counseling recommended by the supervising officer or the court, cooperating with the supervising officer or the court, and waiving the search-warrant requirement.<sup>1</sup> Johnson contends that the instant

---

<sup>1</sup>Some of the conditions of probation or suspension Johnson contests were marked as not applicable to Johnson’s SIS. These include reporting to a supervising officer, obtaining

case is akin to *Kennedy v. State*, 2021 Ark. App. 413, 635 S.W.3d 524, in which the circuit court ordered that, as a condition of Kennedy’s SIS, he must report to a supervising officer. This court held that this condition of probation amounted to an illegal sentence because the “distinction between probation and a suspension is that probation is subject to *supervision by an officer*, and a suspension is not.” *Id.* at 10, 635 S.W.3d at 528–29 (emphasis added). *Kennedy* is distinguishable from the instant case. First, *Kennedy* solely addresses the condition requiring the supervision by a probation officer and does not address the alternative supervision by the circuit court. In his brief, Johnson does not contend that a condition requiring the supervision by a circuit court runs afoul of *Kennedy*, and furthermore, we decline to extend *Kennedy* beyond our holding that an SIS cannot be conditioned upon a requirement to report to a supervising officer for the sole purpose of supervised release.

Johnson also contends that pursuant to Ark. Code Ann. § 16-93-106(a)(1) (Supp. 2023), a *probationer’s* release may be conditioned upon waiving the search-warrant requirement. Johnson interprets the language of the statute to mean that because Ark. Code Ann. § 16-93-106(a)(1) does not specifically provide that an SIS may be conditioned on waiving the warrant requirement, then assigning the waiver-of-a-search-warrant condition in SIS cases is an illegal sentence. Johnson’s argument is not well taken.

Arkansas Code Annotated section 16-93-106(a)(1) provides that

---

permission from a supervising officer or the court before traveling, and waiver of extradition. Additionally, the requirement of paying supervision fees has the built-in exception “unless exempted” included in the wording of the condition. No supervision fees were assigned to Johnson; thus, supervision fees are not at issue here.

[a] person who is placed on supervised probation or is released on parole under this chapter is required to agree to a waiver as a condition of his or her supervised probation or parole that allows any certified law enforcement officer or Division of Community Correction officer to conduct a warrantless search of his or her person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer or division officer.

We construe a statute just as it reads, giving the words their ordinary and usually accepted meaning in common language, and if the language of the statute is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation. *Walden v. State*, 2014 Ark. 193, 433 S.W.3d 864. Section 16-93-106(a)(1) does not exclude the waiver-of-search-warrant condition in SIS cases, and we decline to read into the statute what is not there, as Johnson suggests we do.

Moreover, Arkansas Code Annotated section 5-4-303(a)(1) (Supp. 2021), provides that “[i]f a court suspends imposition of sentence on a defendant or places him or her on probation, the court shall attach such conditions as are reasonably necessary to assist the defendant in leading a law-abiding life.” Subdivision (c)(8) further provides that the SIS may also be conditioned on a requirement that satisfies “any other condition reasonably related to the rehabilitation of the defendant and not unduly restrictive of his or her liberty or incompatible with his or her freedom of conscience.”

In *United States v. Knight*, 534 U.S. 112 (2001), the Supreme Court held that the warrantless-search condition imposed on a probationer by the court was permissible because it encouraged “the hope that he will successfully complete probation and be integrated back into the community” while also addressing the “concern, quite justified, that he will be more

likely to engage in criminal conduct than an ordinary member of the community.” *Id.* at 120–21. Here, Johnson’s probation and SIS were revoked, making him more likely to engage in criminal conduct, and the warrantless-search condition is reasonably necessary to assist him in leading a law-abiding life. We find no error in sentencing and affirm.

### C. Jail-Time Credit

For his last point on appeal, Johnson asserts that he was erroneously denied jail-time credit. We disagree.

Johnson’s argument that the circuit court “incorrectly applied Ark. Code Ann. § 5-4-404” fails. Arkansas Code Annotated section 5-4-404 (Supp. 2023) provides that

[i]f a defendant is held in custody for conduct that results in a sentence to imprisonment or confinement as a condition of suspension or probation, the court, the Department of Correction, or the Department of Community Correction shall credit the time spent in custody against the sentence[.]

In *Humphrey v. State*, 300 Ark. 383, 384, 779 S.W.2d 530, 531 (1989), our supreme court held that

credit for jail time is appropriate when the pretrial incarceration is due to inability to make bail, but that it is not appropriate when the incarceration is due wholly to unrelated charges that are based on conduct other than that for which the defendant is sentenced.

Johnson was arrested on June 7, 2022, and the State did not file the revocation petition until November 15. Johnson’s arrest and incarceration beginning on June 7 were not related to the revocation proceedings; thus, Johnson’s time in jail could not have been from his inability to make bail in these revocation proceedings. The circuit court correctly ruled that no jail-time credit is warranted for that time period.

Affirmed.

GLADWIN and BARRETT, JJ., agree.

*Lassiter & Cassinelli*, by: *Michael Kiel Kaiser*, for appellant.

*Tim Griffin*, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.