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ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-23-638

DEVONTE WASHINGTON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 24, 2024

APPEAL FROM THE ST. FRANCIS
COUNTY CIRCUIT COURT
[NO. 62CR-22-353]

HONORABLE CHRISTOPHER W.
MORLEDGE, JUDGE

REMANDED TO SETTLE THE
RECORD

BRANDON J. HARRISON, Chief Judge

In December 2022, Devonte Washington pleaded guilty to possession of a controlled substance with the purpose to deliver and possession of drug paraphernalia, both Class D felonies. The circuit court ordered Washington to serve ten years’ probation. The record includes a file-marked document titled “Conditions of Probation” signed by the court and Washington. Among other things, the conditions of probation required him to obey all state and federal laws; barred him from possessing, or having under his control, a firearm; and prohibited him from possessing any controlled substance. In March 2023, the State petitioned to revoke Washington’s probation, alleging that he had committed new felonies. After a hearing, the court revoked Washington’s probation and sentenced him to 144 months’ imprisonment. Washington appeals the sufficiency of the evidence to revoke.

We cannot decide the merits of this appeal yet, however, because the record lacks a critical document. The revocation sentence Washington has appealed was entered on the

uniform sentencing-order form developed by the Administrative Office of the Courts, which Administrative Order No. 8 requires the prosecuting attorney to complete and submit “[i]n every action filed in the circuit courts . . . [w]hen any charge results in a commitment to the Arkansas Department of Correction or any of the following—probation, suspended imposition of sentence, commitment to Arkansas Community Correction or to the county jail, a fine, restitution, and/or court costs[.]” Ark. Sup. Ct. Admin. Order No. 8(I)(a) & (III)(d). The “Conditions of Probation” is the only record document that might have attended the original imposition of probation.

Some statutes allow probation to be given before an adjudication of guilt, which is not a “sentence” per se. Ark. Code Ann. § 16-93-303 (Supp. 2023). If the defendant successfully completes probation, the charges are dismissed. *Id.* § 16-93-303(b). But not every defendant—or every offense—qualifies for probation. *See, e.g., Conic v. State*, 2023 Ark. App. 145, 662 S.W.3d 707 (reversing and remanding for resentencing in a revocation appeal from probation illegally given to DWI offender). This case *was* filed in circuit court and it *did* “result[] in . . . probation.” Ark. Sup. Ct. Admin. Order No. 8(I)(a) & (III)(d). If the circuit court imposed probation on Washington without an adjudication of guilt, it could have indicated so on the uniform sentencing order:

Pursuant to A.C.A. §§16-93-301 et seq., or §§_____ this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation.

Maybe the court did so, but the sentencing order wasn’t filed or was inadvertently omitted from the record. Or maybe the court used a nonstandard “Conditions of Probation” instead because the AOC’s uniform sentencing order doesn’t list, or include space to write in, probation conditions. We simply don’t know what was or wasn’t done

and decline to speculate given the potentially jurisdictional importance of the information captured in the uniform sentencing order.

We therefore remand this case to the circuit court to settle the record, if necessary. If it's a matter of the original sentencing order being inadvertently omitted from the record, then the record can easily be supplemented. If no sentencing order was prepared, then the court should prepare one that reflects the offender and offense details and the court's actions when probation was imposed. In any event, a supplemental record with the original sentencing order is due back to this court's clerk in thirty days (24 May 2024).

Remanded to settle the record.

GLADWIN and THYER, JJ., agree.

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

Tim Griffin, Att'y Gen., by: *Jason Michael Johnson*, Ass't Att'y Gen., for appellee.