

Cite as 2024 Ark. App. 345  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CR-23-454

SIDNEY RAY HAYES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 29, 2024

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. 66FCR-16-933]

HONORABLE R. GUNNER DELAY,  
JUDGE

AFFIRMED; REMANDED TO  
CORRECT THE SENTENCING  
ORDER

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**ROBERT J. GLADWIN, Judge**

Appellant Sidney Ray Hayes appeals the Sebastian County Circuit Court’s revocation of his probation. Hayes raises the same two points on appeal as in *Hayes v. State*, 2024 Ark. App. 347, \_\_\_ S.W.3d \_\_\_,<sup>1</sup> which is also handed down today. The relevant facts, Hayes’s arguments, and this court’s conclusions are set forth in the companion case and are incorporated herein. Accordingly, we affirm the revocation of Hayes’s probation. We do, however, remand this case to correct the sentencing order.

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<sup>1</sup>The underlying case number is 66GCR-14-130 (simultaneously before us as CR-23-455).

The sentencing order in case 66FCR-16-933 states that Hayes was convicted and sentenced for failure to comply with registration and reporting requirements of sex/child offender registration in violation of Arkansas Code Annotated section 12-12-904(a)(1)(A)(i) (Repl. 2016), a Class C felony. He was sentenced to five years' imprisonment plus an additional five-year suspended sentence and ordered to pay court costs pursuant to the entry of a sentencing order filed on January 3, 2017. Hayes was given four days of jail credit. The suspended sentence was subject to a term of good behavior and a \$10 fee to be paid on top of each monthly installment toward his \$150 in court costs.

Hayes served his five-year sentence and was released from the Arkansas Department of Correction on December 22, 2021. Upon his release, he began serving his suspended sentence. *See* Ark. Code Ann. § 5-4-307(c) (Repl. 2013). Seventeen months later, the circuit court revoked the suspended sentence in both this case and the companion case 66CR-14-130 (CR-23-455).

The sentencing order in the revocation proceeding applied to both cases and, with respect to this case, was for a Class C felony and subject to a ten-year cap. *See* Ark. Code Ann. § 12-12-904 (Supp. 2023); Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2013). In accordance with these statutes, Hayes could be sentenced to approximately five years' imprisonment upon the revocation of his suspended sentence.

It is undisputed that Hayes was released from incarceration on December 22, 2021, with Hayes having served almost five years of imprisonment, assuming he was incarcerated from the time his sentence was pronounced on December 28, 2016, to the time he was

released on December 22, 2021, plus the four days of jail credit he was given at sentencing. Thus, the maximum total sentence he could have been sentenced to upon revocation is less than the six years he was given. Consequently, this case must be remanded for resentencing. See, e.g., *Stanley v. State*, 2022 Ark. App. 298, at 2–3.

Accordingly, we affirm the revocation of Hayes’s probation and remand for resentencing, with Hayes eligible to be sentenced to a term of imprisonment that, when added to the term he has already served, does not exceed ten years.

Affirmed; remanded to correct the sentencing order.

VIRDEN, J., agrees.

HIXSON, J., concurs.

**KENNETH S. HIXSON, Judge, concurring.** I agree that the circuit court issued an illegal sentence and that the case must be remanded for resentencing. The appellant was convicted of a Class C felony, which carried with it a ten-year maximum sentence. Hayes was sentenced to five years’ imprisonment, to an additional five-year suspended imposition of sentence (SIS), and to pay court costs pursuant to the entry of a sentencing order filed on January 3, 2017. Hayes was given four days of jail-time credit. After Hayes was released from imprisonment, his SIS commenced. After approximately seventeen months into his SIS, the circuit court revoked Hayes’s SIS and sentenced him to seventy-two months of imprisonment. This was erroneous, and Hayes must be resentenced.

The majority opinion states, “In accordance with [Ark. Code Ann. § 12-12-904; Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2013)], Hayes could be sentenced to *approximately* five years’

imprisonment upon the revocation of his suspended sentence.” (Emphasis added.) In my opinion, insertion of the word “approximately” into the opinion can be reasonably interpreted to imply that the appellant can be given credit for some, or all, of the seventeen months that he was subject to the conditions of his SIS prior to revocation on resentencing. Such an interpretation would be misleading. The statutes regarding resentencing after revocation of SIS or probation are clear. Time served by the defendant while imprisoned and the time period during which the defendant is subject to SIS or probation are apples and oranges. Simply put, for purposes of resentencing, incarceration time imposed by the trial court is counted; the time period during which the defendant is subject to SIS or probation is not. Upon revocation, the appellant may be resentenced to imprisonment for a period that, when added to the term of imprisonment that was previously imposed, does not exceed ten years.

*Matt Kezhaya and Sonia Kezhaya, for appellant.*

*Tim Griffin, Att’y Gen., by: Christopher R. Warthen, Ass’t Att’y Gen., for appellee.*