

Cite as 2024 Ark. App. 347
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-23-455

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. 66GCR-14-130]

HONORABLE R. GUNNER DELAY,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Sidney Ray Hayes appeals the May 16, 2023 sentencing order by which the Sebastian County Circuit court revoked his suspended imposition of sentence (SIS) in both case No. 66GCR-14-130 (“14-130”) and case No. 66FCR-16-933 (“16-933”) after finding that he had violated the terms and conditions of his SIS by committing first-degree terroristic threatening, first-degree criminal mischief, and second-degree assault and failed to pay fines and costs. He was sentenced to six years’ imprisonment in each case. Hayes has appealed in both cases, arguing that (1) the sentence exceeds the statutory maximum; and (2) Hayes was clearly unable to pay costs as ordered. We affirm this case. This is a companion case to *Hayes v. State*, 2024 Ark. App. 345, ___ S.W.3d ___, also handed down today.

I. Facts and Procedural History

On December 22, 2014, a sentencing order was entered following Hayes's negotiated plea of guilty to a charge of sexual assault in the second degree, a Class B felony in 14-130. Pursuant to that agreement, Hayes was sentenced to 120 months' SIS. The SIS was subject to a term of good behavior and additional administrative fees to be paid on top of each monthly installment toward his \$1,781 in court costs and fines.

In case 16-933 (now before us as CR-23-454) Hayes pleaded guilty on December 28, 2016, to a charge of failure to comply with reporting requirements of sex/child offender registration, 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 SIS 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 was released from the Arkansas Department of Correction on December 22, 2021. Upon his release, he began serving his suspended sentence. On February 22, 2023, the State petitioned to revoke Hayes's SIS in both previously described cases. The State asserted that Hayes had been charged with first-degree terroristic threatening, first-degree criminal mischief, and two counts of second-degree assault. As alternative grounds for revocation, the State asserted that Hayes was in default of the payment plan for court costs and fees, with an arrearage of \$250.

On March 15, the circuit court decreed Hayes to be indigent and appointed the public defender. On the affidavit of indigency, Hayes certified that he is unemployed, has no liquid assets, no real estate, no vehicles, and no other nonliquid assets. He also volunteered that he is “homeless.”

The hearing on the revocation petition was held on May 4. The criminal allegations of the revocation petition stemmed from an incident on February 18 in which Hayes became irate and violent in the admissions area at Valley Behavioral Health, a psychiatric-care facility in Fort Smith. The State called Kyle Medley, a lead behavioral health technician for Valley Behavioral, as a witness at the hearing. Medley recalled being alerted to a rapid response needed in admissions, which is used for patients who are being aggressive or self-harming. Medley arrived and saw Hayes “barricaded” in the admissions room, having a psychotic breakdown. Hayes was “really irate” and “very agitated.” He was telling staff he wanted to be let out “to go get a cigarette.” Hayes said he would “kill all of us, bash our heads in.” He also threatened to “burn the place down” if he were not allowed to leave. Hayes kicked the door open to the lobby, then “ripped” a camera out of the ceiling, which pulled a ceiling tile down, and tried to pull the camera wiring out of the ceiling. Hayes pushed one of Medley’s coworkers, then struck Medley in the forehead. Medley explained that Hayes’s utterances were “very word salad” and “jumbled.” Medley was unsure where Hayes was prior to admittance at the clinic: “either the hospital or the police dropped him off.”

On cross, Medley reiterated his opinion that Hayes was in a psychotic state and opined it was possible that Hayes was not purposely or knowingly threatening people. On

redirect, Medley conceded that he is not a medical doctor. Medley testified that it is the organizational policy to ask patients when they come in whether they know the year and the president, “or whatever.” But Medley did not perform this examination. Hayes was repeatedly told that he was at Valley Behavioral and “seemed to understand that he was there.” Medley believed that Hayes was involuntarily committed, but he did not know why.

The State called Officer Jody Pyle, who was called for assistance at Valley Behavioral. Officer Pyle with the Fort Smith Police Department responded to a call for assistance at Valley Behavioral. He saw Hayes, who appeared to be “very agitated,” sitting in a chair surrounded by three or four nurses. Pyle also saw the damage caused by Hayes’s ripping out the camera. Hayes was arrested. Officers struggled to get Hayes into the back of the squad car because he refused to get into the backseat, and when he did, refused to put his foot in the car. Hayes was upset and continued to yell and use profanities.

On cross, Officer Pyle refused to opine as to whether Hayes was experiencing “some kind of a psychotic break.” On examination by the court, Officer Pyle could not recall any specific statements by Hayes, only that his main concern was not being at Valley Behavioral.

A payment ledger was admitted into evidence without objection. The ledger noted Hayes had a balance of \$250, and he had not made a single payment towards this balance.

Hayes testified that he was under the impression that he was at Hope Campus on the way to receive an operation. He denied threatening anyone. He denied striking anyone on the forehead, contending instead that he softly placed his finger on the gentlemen’s heads.

As to the camera, he testified that he touched the drop ceiling and it fell down, at which point a member of staff grabbed the camera out of his hands causing the wires to rip.

Hayes explained that he was on disability until he was incarcerated, has no income, and has been surviving off of just food stamps. He testified that he had been receiving disability but lost it when he went to prison. Hayes agreed that he smoked, drank alcohol, and used marijuana. He also acknowledged that he prioritized purchasing these items over his court-related payment obligations.

On cross, the State inquired at length into Hayes's smoking and drinking habits. The State focused on the "problem" that Hayes had money to procure cigarettes and alcohol but had not "paid a single penny" on his fines.

Hayes denied threatening or assaulting anyone at Valley Behavioral, but he did concede that he put his finger "on both the gentleman's heads and told them "if I am on my best behavior, to please let me out of here." He denied ripping out the camera, explaining that someone else pulled out the camera and that the ceiling tile fell down after he merely touched it.

The defense rested after Hayes was excused.

During closing arguments, the State asserted that Hayes had violated the condition of good behavior when Hayes was "out at Valley for a psychosis maybe," tore up the building, pushed people, and threatened to kill staff. The State also asserted that the "biggest problem" was that Hayes was in arrears on his \$150 in court costs. The State asked the circuit court to

“throw the book at him” and order a sentence of “25 years.” The circuit court asked for clarification as to Hayes’s financial status:

COURT: Do you know, he mentioned something about being on disability and it being discontinued. I didn’t hear any evidence that that has been reinstated or what the status of that is by anybody. Does anybody know what the status of that is?

DEFENSE COUNSEL: I believe it has not been reinstated.

HAYES: I don’t have any money.

Hayes’s counsel reiterated that Hayes has no income from which he can pay the fines. As to the underlying criminal charges, counsel pointed out that “everyone is kind of agreed that he [Hayes] was not in his right mind at that time” and pled for mercy.

The circuit court inquired of Hayes’s counsel why there was no motion for mental evaluation filed. Counsel responded that it appeared Hayes understood the proceedings against him.

The circuit court prefaced its ruling with a finding that Hayes seemed to be very responsive to the questions asked and defensive in terms of different lines of questioning. Continuing, the circuit court announced regret that it did not have more information about Hayes’s disability. That said, the circuit court found that there were acts of violence, which was its main concern, “other than the failure to pay.” The circuit court also found that Hayes knew what he was doing at that time, and that his episode was fairly egregious. The circuit court announced a six-year sentence. Hayes’s counsel only then began to ask for a mental-health evaluation, but the circuit court interrupted and ended the hearing.

A sentencing order was entered on May 16, 2023, by which Hayes was sentenced to 72 months' incarceration. The circuit court ran that sentence concurrently with the revoked suspended sentence at issue in CR-23-455. Hayes filed a timely notice of appeal fifteen days later.

II. Discussion

A. Illegal Timing of Sentence

An illegal sentence is one that is illegal on its face. *Redus v. State*, 2019 Ark. 44, at 3, 566 S.W.3d 469, 471. A sentence in excess of the statutory maximum is illegal and therefore void as in excess of subject-matter jurisdiction. *Id.* Sentencing is entirely a matter of statute. *Walden v. State*, 2014 Ark. 193, at 7, 433 S.W.3d 864, 869; Ark. Code Ann. § 5-4-104(a) (Supp. 2023). Pursuant to the rule of lenity, statutes are to be strictly construed with all doubts resolved in favor of the defendant. *See Walden*, 2014 Ark. 193, at 8, 433 S.W.3d at 869.

This revocation was also based on a 120-month suspended sentence, of which Hayes had served nearly 101 months when the revocation order was entered. Hayes submits that the statutory maximum allowable is a period of confinement up to the remainder of his suspended sentence, yet the revocation order is for another 72 months. Hayes claims that if it is affirmed, he will have been ordered to serve 173 months on a 120-month sentence.

Hayes also reiterates that the evidence clearly shows that he was unable to pay his fines. He provided testamentary evidence that he was homeless, without a job, without

income, and without assets. He simply had no financial resources to commit toward court costs.

In Arkansas, sentencing is entirely a matter of statute in effect at the time of the commission of the offense. *E.g.*, *State v. O'Quinn*, 2013 Ark. 219, at 3, 427 S.W.3d 668, 670. When Hayes committed second-degree sexual assault in June 2014, the relevant statute provided that when a court “revokes a [defendant’s] suspension of sentence or probation, the court may enter a judgment of conviction and may impose any sentence on the defendant that might have been imposed originally for the offense of which he or she was found guilty.” Ark. Code Ann. § 16-93-308(g)(1)(A) (Supp. 2013). The imposition of this sentence upon revocation must account for any period of incarceration the defendant served for the same offense, to ensure that the total sentence of incarceration is equal to or less than the statutory maximum. Ark. Code Ann. § 16-93-308(g)(1)(B).

In accordance with the foregoing, Hayes’s sentence to six years’ imprisonment upon the revocation of his sentence in this case was legal. Hayes pleaded guilty to second-degree sexual assault, a Class B felony, in June 2014. *See* Ark. Code Ann. § 5-14-125(b)(1) (Repl. 2013). Upon pleading guilty on December 17, 2014, he was sentenced to a ten-year SIS. A Class B felony is punishable by a sentence of between five and twenty years’ imprisonment. Ark. Code Ann. § 5-4-401(a)(3) (Repl. 2013). A petition to revoke was filed on February 22, 2023—within the period covered by the SIS. Contrary to his assertion otherwise, upon revocation, Hayes was eligible to receive a sentence of imprisonment of five to twenty years. He was sentenced to six years’ imprisonment. Because that sentence falls within the statutory

range, his sentence was legal. See, e.g., *Owens v. State*, 2021 Ark. App. 5, at 5, 615 S.W.3d 749, 752.

Neither *Donovan v. State*, 95 Ark. App. 378, 237 S.W.3d 484 (2006), nor *Chadwell v. State*, 80 Ark. App. 133, 91 S.W.3d 530 (2002), upon which Hayes relies, require a contrary result. In *Adams v. State*, 2014 Ark. App. 718, at 3–5, 452 S.W.3d 113, 115–16, this court held that *Chadwell* was no longer good law and emphasized that, upon revocation, a circuit court has the authority to impose any sentence that might have been imposed originally. The language in *Donovan* that Hayes quotes—“the probationer can be required to serve only the remainder of the time imposed”—was primarily supported by a citation to *Lyons v. State*, 35 Ark. App. 29, 813 S.W.2d 262 (1991). As with *Chadwell*, this court in *Adams* made clear that *Lyons* was no longer good law. *Adams*, 2014 Ark. App. 718, at 3–5, 452 S.W.3d at 115–16.

B. Inability to Pay

Hayes also argues that because he was clearly unable to pay costs as ordered, it was clearly erroneous to revoke his SIS in either case because of nonpayment of fines. He urges that the record clearly shows that he was unable to pay toward his court costs.

The State has the burden in a revocation proceeding to prove by a preponderance of the evidence that the defendant inexcusably failed to comply with at least one condition of probation. E.g., *Riley v. State*, 2018 Ark. App. 369, at 2, 553 S.W.3d 785, 787. The lower burden of proof means that evidence that is insufficient for a criminal conviction may be sufficient to revoke probation. E.g., *Springs v. State*, 2017 Ark. App. 364, at 3, 525 S.W.3d 490, 492–93. Consequently, the circuit court’s determination regarding revocation will only

be overturned when the findings are clearly against the preponderance of the evidence. *E.g., id.* The circuit court is in the superior position to assess the credibility of witnesses and the weight to be given to evidence, thus the circuit court's findings are afforded due deference on appeal. *E.g., Holmes-Childers v. State*, 2016 Ark. App. 464, at 4, 504 S.W.3d 645, 648. The circuit court is not required to believe a defendant's self-serving testimony. *E.g., Jones v. State*, 2022 Ark. App. 511, at 7, 656 S.W.3d 219, 223. If an appellant challenges only one of multiple independent grounds for revocation on appeal, the circuit court's decision can be affirmed without addressing the merits of the argument. *E.g., Williams v. State*, 2015 Ark. App. 245, at 10, 459 S.W.3d 814, 820.

A revocation based on a failure to pay court-ordered fees requires a showing that the defendant failed to make a good-faith effort to pay. *E.g., London v. State*, 2017 Ark. App. 585, at 3, 534 S.W.3d 758, 760. Once the State has introduced evidence of nonpayment, the burden then shifts to the defendant to provide a reasonable excuse for the failure to pay. *E.g., Veasley v. State*, 2021 Ark. App. 491, at 2-3, 636 S.W.3d 404, 405. It is the defendant's obligation to justify the failure to pay, and this shift of the burden of production provides an opportunity to explain the reasons for nonpayment. *Stewart v. State*, 2021 Ark. App. 289, at 3-4, 624 S.W.3d 357, 359. If the probationer asserts an inability to pay and provides evidence demonstrating that inability, then the State must demonstrate that the probationer did not make a good-faith effort to pay. *Id.* at 4, 624 S.W.3d at 359-60. Ultimately, the State has the burden of proving that the defendant's failure to pay was inexcusable. *E.g., Vangilder v. State*, 2018 Ark. App. 384, at 5, 556 S.W.3d 534, 537.

Factors to be considered in determining whether to revoke a probation or suspension for failure to pay include the defendant's employment status, earning ability, and financial resources as well as the willfulness of the failure to pay and any other special circumstances. Ark. Code Ann. § 5-4-205(f)(3) (Supp. 2023); *see also* *Cockrell v. State*, 2024 Ark. App. 184, at 6, 686 S.W.3d 612, 616.

Hayes argued that he was unemployed, no longer received disability benefits after his incarceration, and had no other assets. Accordingly, he submits that it was clearly erroneous for the circuit court to base the revocation order, even in part, on his nonpayment of court costs. He acknowledges that the circuit court described the alleged violence in his new criminal charges as “probably the main concern . . . [but then added] other than the failure to pay on these fines and costs.” He notes that there were no fines assessed, only court costs.

Hayes acknowledges that his failure to pay was one of the bases for revocation, but he asserts that a failure to pay does not by itself justify revocation. Instead, the question turns on whether Hayes had a reasonable excuse for nonpayment. *Veasley, supra*. Hayes maintains that he satisfied the shifting burden once the State provided evidence of his nonpayment. He provided that explanation that he was homeless, had no job, and had no assets. During the trial, it also was shown that, despite the fact that he previously had been receiving disability benefits, he no longer does since he became incarcerated.

The ultimate burden is on the State to show an inexcusable failure to pay. *Stewart, supra*. Hayes submits that because the circuit court clearly erred by relieving the State from

having to prove the inexcusable element, the revocation order based on his arrearage should be dismissed.

We disagree and note that Hayes fails to challenge independent grounds for the revocation. Alternatively, sufficient evidence supports the finding that he inexcusably failed to pay his court costs. Hayes fails to challenge the other grounds for revocation—namely, that he committed first-degree terroristic threatening, first-degree criminal mischief, and second-degree assault. The circuit court specifically noted in its ruling that it was concerned about Hayes’s acts of violence and found that he knew what he was doing at the time—and that it was a “fairly egregious episode here in terms of behavior toward other people and private property.” Hayes’s failure to challenge the sufficiency of the evidence for these other grounds is fatal to his claim, and we can affirm on this basis alone. *See, e.g., Williams*, 2015 Ark. App. 245, at 10, 459 S.W.3d at 820.

Alternatively, we hold that sufficient evidence supports the circuit court’s finding that Hayes inexcusably failed to pay his court-ordered costs. Hayes never made a single payment towards the \$150 he owed in this case. Despite Hayes’s testimony that he made a living by selling food stamps, he also acknowledged that he prioritized paying for alcohol, tobacco, and marijuana over making any court-ordered payment. Hayes’s failure to pay was not inexcusable but, rather, a choice he made to prioritize his vices over his obligations. *See, e.g., Williams v. State*, 2019 Ark. App. 437, at 4, 586 S.W.3d 208, 211 (holding State carried burden when probationer spent money on nonessential items instead of court-ordered

payments). Consequently, sufficient evidence was presented that Hayes inexcusably failed to pay, and this court affirms on that basis as well.

Affirmed.

VIRDEN and HIXSON, JJ., agree.

Matt Kezhaya and Sonia Kezhaya, for appellant.

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