

Cite as 2024 Ark. App. 371
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-23-741

SAMUEL GOLDEN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT

[NOS. 66FCR-08-1024; 66FCR-08-1025;
66FCR-08-1026; 66FCR-08-1193; 66FCR-
08-1194; 66FCR-08-1195; 66FCR-15-1138]

HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED AS MODIFIED; MOTION
TO WITHDRAW GRANTED

BART F. VIRDEN, Judge

The Sebastian County Circuit Court revoked appellant Samuel Golden’s suspended sentences for six counts of delivery of methamphetamine and for possession of drug paraphernalia. He was sentenced to an aggregate term of seventy-four years’ imprisonment followed by a period of suspended imposition of sentence (SIS). Defense counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(b), along with a no-merit brief asserting that there are no issues of arguable merit for appeal. Golden has filed pro se points for reversal, to which the State has responded. We affirm as modified and grant counsel’s motion to withdraw.

I. Background

In 2009, Golden pleaded guilty to six counts of delivery of methamphetamine, Class Y felonies, committed between April and July 2008, and was sentenced to concurrent terms of fifteen years' imprisonment followed by a twenty-year period of SIS. The terms and conditions of his suspended sentences in case Nos. FCR-08-1024; FCR-08-1025; FCR-08-1026; FCR-08-1193; FCR-08-1194; and FCR-08-1195 included that he would not violate any state or federal laws and that he would not possess or use any controlled substances. On February 26, 2014, Golden was released from prison.

In 2016, Golden pleaded guilty to one count of possession of drug paraphernalia, a Class B felony, committed in May 2015, and was sentenced to six years' imprisonment followed by a period of SIS for fourteen years. The terms and conditions of Golden's suspended sentence in case No. FCR-15-1138 included that he would not violate any state or federal laws and would not possess or use any controlled substances and that he would pay fees and costs. On February 22, 2017, Golden was released from prison.

On March 27, 2023, the State filed a petition to revoke Golden's suspended sentences in all of the cases above. The State alleged that on March 15, Golden had violated state law by possessing methamphetamine with the purpose to deliver, possessing fentanyl with the purpose to deliver, and possessing drug paraphernalia. With respect to FCR-15-1138, the State also alleged that Golden had failed to pay fees and costs.

The trial court held a revocation hearing in September 2023. Officer Daniel Haddock with the Greenwood Police Department testified that he and another officer were surveilling

a parolee named Albert Evans, who they believed was selling controlled substances out of a hotel room. The police officers confronted Golden as he was leaving the hotel room and searched him. In his pocket, they found a bag containing what was later confirmed to be twenty-six grams of methamphetamine and a smaller bag of what they suspected was fentanyl, although it was not ultimately tested. Inside the hotel room, they saw a pipe for smoking methamphetamine along with a soda can with suspected drug residue on it.

Golden testified that he had purchased the methamphetamine for \$200 and insisted that it was for his personal use. He stated that he had in the past bought controlled substances from Evans. Golden admitted that possessing and using methamphetamine is a violation of his suspended sentences.

The trial court found that Golden had violated the terms and conditions of his suspended sentences by possessing twenty-six grams of methamphetamine. The trial court sentenced him to ten-year terms of imprisonment on each of the six Class Y felonies and fourteen years' imprisonment on the Class B felony, all of which were to be served consecutively. The trial court also stated that the terms of imprisonment on the Class Y felonies would be followed by a period of SIS.

On the sentencing order, with respect to the six counts of delivery of methamphetamine, the trial court indicated that Golden's sentence was 120 months "imposed" and 180 months "SIS." With respect to FCR-15-1138, the trial court "imposed" 168 months with no period of SIS. The trial court indicated below each offense that the

“[s]entence will run,” and the box is checked “consecutive” as to all of the other case numbers. In the space below “total time to be served for all offenses” is 888 months.

II. *Counsel’s No-Merit Brief*

In considering a no-merit brief, we must determine whether, after a full examination of the proceedings, there is any nonfrivolous reason for appeal. *Norton v. State*, 2018 Ark. App. 370, 553 S.W.3d 765. A no-merit brief must provide a “full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous.” *Id.* at 3, 553 S.W.3d at 767. Arkansas Supreme Court Rule 4-3(b) provides that a request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief that contains an argument section that consists of a list of all rulings adverse to the defendant made by the trial court on all objections, motions, and requests made by either party, with an explanation as to why each adverse ruling is not a meritorious ground for reversal.

Defense counsel addressed the sufficiency of the evidence supporting Golden’s revocation in each case and asserted that there was only one adverse ruling during the hearing, which was the denial of Golden’s request for a continuance.

In probation-revocation proceedings, the State has the burden of proving by a preponderance of the evidence that a probationer violated the terms of his probation as alleged in the revocation petition, and we will not reverse the trial court’s decision to revoke probation unless it is clearly against the preponderance of the evidence. *Baskins v. State*, 2024 Ark. App. 311, ___ S.W.3d ___. On sufficiency, Golden clearly violated the terms and conditions of his suspended sentences by possessing a controlled substance, and he admitted

having bought the methamphetamine for his personal use. We agree that there would be no merit to an appeal with regard to sufficiency.

Golden requested that the trial court continue his revocation hearing from September 2023 to January 2024. Golden had suffered a broken arm and had a workers'-compensation claim pending and wanted to postpone the revocation hearing so that he could seek medical treatment and therapy for his arm. The prosecutor said that he had offered a deal wherein Golden could plead guilty and be sentenced later and that Golden had not seemed interested in doing that. The prosecutor also said that he had "serious reservations" whether Golden would show up at a later date given that he was facing substantial time in prison. The trial court denied Golden's request for a continuance.

We review the denial of a motion for a continuance for an abuse of discretion. *Page v. State*, 2024 Ark. App. 259, ___ S.W.3d ___. In order to warrant reversal, an appellant must demonstrate both that the trial court abused its discretion in denying the continuance and prejudice from the denial of the continuance that amounts to a denial of justice. *Id.* Counsel points out in her brief that Golden testified in his own defense at the hearing and did not explain how going forward with the hearing would hinder his arm's recovery. We agree that there is no merit to an appeal from the denial of Golden's motion for a continuance.

Because counsel has complied with *Anders* and Rule 4-3(b), we grant her motion to withdraw.

III. Golden's Pro Se Brief

Golden does not challenge the sufficiency of the evidence supporting the trial court's decision to revoke his suspended sentences. He argues that the trial court abused its discretion in denying his motion for a continuance because the trial court did not question him about whether he was under the influence of any narcotics. Golden asserts that his prescribed medications impaired him "to the point of not being fully able to engage during the revocation hearing." That argument, however, was not made below. We will not address a procedural challenge unless it was adequately preserved below. *Richard v. State*, 2020 Ark. App. 492.

Golden also argues that he received an illegal sentence. Golden believes that he was sentenced to eighty-nine years' imprisonment followed by 114 years of SIS. He argues that the trial court erred in ordering that the original suspended sentences run concurrently and then ordering that they run consecutively after revocation. Golden also argues that the trial court misinterpreted Ark. Code Ann. § 5-4-307(b)(1) (Repl. 2006), which requires that multiple periods of SIS must run concurrently. He also says that the trial court lacked jurisdiction to revoke his SIS before the sentence had commenced and that the trial court exceeded the statutory maximum sentence for a Class Y felony. Golden thinks that we should "fix" his sentence at ten years or remand for resentencing with instructions to correctly apply section 5-4-307(b).

In Arkansas, sentencing is entirely a matter of statute. *Walden v. State*, 2014 Ark. 193, 433 S.W.3d 864. A sentence is void or illegal when the trial court lacks the authority to

impose it. *Id.* The issue of an illegal sentence cannot be waived by the parties and may be addressed for the first time on appeal. *Reyes v. State*, 2015 Ark. App. 55, 454 S.W.3d 279.

The range of possible punishment for a Class Y felony is not less than ten years and not more than forty years, or life imprisonment. Ark. Code Ann. § 5-4-401(a)(1) (Repl. 2006). For the six counts of delivery of methamphetamine, Golden was originally sentenced to concurrent terms of fifteen years' imprisonment to be followed by concurrent terms of twenty years SIS. For a Class B felony, the sentence shall be not less than five years nor more than twenty years. Ark. Code Ann. § 5-4-401(a)(3). For the one count of possession of drug paraphernalia, Golden was originally sentenced to six years' imprisonment followed by a fourteen-year period of SIS. Golden's original sentences are within the statutory range and are legal.

The entry of a judgment of conviction “does not preclude . . . [t]he modification of the original order suspending the imposition of sentence on a defendant or placing a defendant on probation following a revocation hearing.” Ark. Code Ann. § 5-4-301(d) (Repl. 2006); *see also Todd v. State*, 2023 Ark. 121. Upon revocation, Ark. Code Ann. § 5-4-309(f)(1)(A) (Repl. 2013) provides that 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 was found guilty. *See id.* Here, the trial court could have imposed up to twenty-five years' imprisonment on the Class Y felonies; it sentenced Golden to only ten years' imprisonment and suspended imposition of an additional term of imprisonment for fifteen years. On the Class B felony, the trial court could have sentenced Golden to up to

fourteen years' imprisonment, which is what it ultimately imposed. Also, the trial court was not prohibited from ordering that the terms of imprisonment run consecutively to each other.

When multiple sentences of imprisonment are imposed on a defendant convicted of more than one offense, including an offense for which a previous suspension or probation has been revoked, the sentences shall run concurrently unless the court orders the sentences to run consecutively. Ark. Code Ann. § 5-4-403(a) (Repl. 2006). The decision to impose consecutive or concurrent sentences lies solely within the province of the trial court, and the appellant assumes a heavy burden of showing that the trial court failed to give due consideration in the exercise of that discretion. *Maldonado v. State*, 2009 Ark. 432. Golden does not argue that the trial court abused its discretion in imposing consecutive terms of imprisonment—he argues only that the trial court was prohibited from imposing consecutive terms of imprisonment after originally ordering that they run concurrently to each other. Upon revocation, the trial court's imposition of an aggregate term of 888 months, or seventy-four years, was legal, except to the extent that periods of SIS were ordered to run consecutively to each other.

In *Walden*, *supra*, the Arkansas Supreme Court held that section 5-4-307(b)(1) provides that, whether imposed at the same or a different time, multiple periods of suspension or probation run concurrently. In other words, while terms of imprisonment may run consecutively to each other, a court is prohibited from ordering periods of SIS to run consecutively to each other. See *Walden*, *supra*. To the extent that the trial court's

sentencing order imposes the fifteen-year suspended sentences on the Class Y felonies consecutively to each other, it is illegal.

Moreover, section 5-4-307(b)(2) states that “[t]he period of a suspension or probation also runs concurrently with any federal or state term of imprisonment or parole to which a defendant is or becomes subject to during the period of the suspension or probation.” A trial court is not authorized to order that a suspended sentence run consecutively to a term of imprisonment that was imposed for a different charge. *Willingham v. State*, 2021 Ark. 177, 631 S.W.3d 558. Therefore, the suspended sentence imposed with respect to Golden’s six convictions for delivery of methamphetamine may not run consecutively to the term of imprisonment for his possession-of-drug-paraphernalia conviction. To the extent that the sentencing order indicates otherwise, it is illegal.

If we hold that a trial court’s sentence was illegal and that the error had nothing to do with guilt but only with the illegal sentence, we can correct the sentence in lieu of remanding. *Kennedy v. State*, 2021 Ark. App. 413, 635 S.W.3d 524. We conclude that Golden received an illegal sentence to the extent that the trial court’s sentencing order appears to order that his periods of SIS run consecutively to each other and to the period of imprisonment for a different offense. Accordingly, we modify Golden’s sentence to clarify that he is sentenced to serve an aggregate term of seventy-four years’ imprisonment on his seven convictions at issue and that the fifteen-year periods of SIS imposed by the trial court with respect to his convictions for delivery of methamphetamine will run concurrently to each other and to the period of imprisonment for possession of drug paraphernalia.

Affirmed as modified; motion to withdraw granted.

GLADWIN and HIXSON, JJ., agree.

Dusti Standridge, for appellant.

Tim Griffin, Att’y Gen., by: *Rebecca Kane*, Ass’t Att’y Gen., for appellee.