

PATRICIA KOZAL *v.* STATE OF ARKANSAS

5-5476

451 S. W. 2d 224

Opinion delivered March 9, 1970

CRIMINAL LAW—APPEAL & ERROR—GROUNDS OF REVIEW.—Alleged error in fixing minimum time to be served by defendant in the Department of Corrections can not be considered on appeal when no objection is made to the entry of judgment or the penitentiary commitment thereon, or when the point is not presented to the trial court in a motion for new trial.

*David O. Partain*, for appellant.

*Joe Purcell*, Attorney General; *Don Langston*, Asst. Atty. Gen., for appellee.

JOHN A. FOGLEMAN, Justice. Appellant asserts that the circuit court committed reversible error in its judgment revoking a previous suspension of sentence on a felony charge. The particular point upon which appel-

lant relies is that no minimum sentence was fixed in the original judgment of the court suspending sentence entered on November 19, 1968, so that the court had no authority to fix a minimum sentence in its later judgment revoking the suspension and ordering appellant committed to the Department of Corrections. Appellant argues that Section 28 of Act No. 50 of 1968, which became effective on February 21, 1968, governs this situation rather than Act 48, Section 28(2), or Act 94, Section 1(2) of 1969.

The record reflects no objection to the judgment of the court fixing the minimum parole time at one-third of the sentence. The motion for new trial simply alleges that the court's order revoking the suspension of sentence previously imposed by the court and the finding that appellant had not been of good conduct and behavior are contrary to both the law and the evidence introduced pertaining to this issue and case. No mention whatever is made of the fixing of a minimum parole time.

We held in *Petty v. State*, 245 Ark. 808, 434 S. W. 2d 602, that we could not consider alleged error in fixing the minimum time to be served in the Department of Corrections when no objection was made to the entry of the judgment or the penitentiary commitment thereon or when the point was not presented to the trial court in a motion for new trial. Upon that authority, the judgment is affirmed.

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