NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR07-1149

STEVEN LEROY REEVES APPELLANT	Opinion Delivered December 10, 2008 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, [NOS. CR-95-199, CR-2000-131]
V.	HONORABLE J. MICHAEL FITZHUGH, JUDGE
STATE OF ARKANSAS APPELLEE	REVERSED and REMANDED

LARRY D. VAUGHT, Judge

Steven Leroy Reeves appeals the revocation of his suspended sentence. In *Reeves v. State*, 2008 WL 946098 (Ark. App., Apr. 9, 2008) (unpublished opinion), we sua sponte ordered rebriefing and directed the parties to address whether the trial court had subject-matter jurisdiction. Reeves now argues that the revocation of his suspended sentence should be reversed and his case dismissed because the trial court lacked subject-matter jurisdiction to modify his original sentence after it was put into execution. We agree that the trial court lacked subject-matter jurisdiction, and we reverse and remand.

In February 1995, Reeves was charged by information of committing second-degree battery. In a judgment dated August 9, 1995, Reeves pled nolo contendere, received a three-year suspended sentence, and was ordered, among other things, to pay restitution to the victim.

Over the course of nine years, the State filed three petitions to revoke Reeves's suspended sentence for failure to pay restitution. Prior to disposition, each petition was withdrawn by the State. On May 25, 2007, the State filed a fourth petition to revoke, alleging that Reeves failed to pay restitution. Following a hearing, the trial court granted the State's petition and entered a judgment and commitment order on August 13, 2007, sentencing Reeves to two years' imprisonment in the Arkansas Department of Correction and a suspended sentence of four and one-half years. The only argument now made by Reeves is that the trial court lacked subject-matter jurisdiction to modify his sentence.

In Arkansas, sentencing is entirely a matter of statute. Ark. Code Ann. § 5-4-104(a) (Repl. 2006); *State v. Hardiman*, 353 Ark. 125, 114 S.W.3d 164 (2003); *State v. Stephenson*, 340 Ark. 229, 9 S.W.3d 495 (2000). A sentence is void when the trial court lacks authority to impose it. *Howard v. State*, 289 Ark. 587, 715 S.W.2d 440 (1986). Where the law does not authorize the particular sentence pronounced by a trial court, the sentence is unauthorized and illegal, and the case must be reversed. *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003).

As a threshold matter, we note that the trial court had jurisdiction to revoke Reeves's 1995 three-year suspended sentence twelve years later pursuant to Arkansas Code Annotated section 5-4-303(f) (Repl. 1993).[1] This section provided:

> If the court has suspended the imposition of sentence or placed a defendant on probation conditioned upon him making restitution or reparation and the defendant has not satisfactorily made all his payments when the probation period has ended, the court shall have the authority to continue to assert its jurisdiction over the recalcitrant defendant and extend the probation period as it deems necessary or revoke the defendant's suspended sentence.

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[1]Similar statutory language is now found in Arkansas Code Annotated section 5-4-303(h)(2) (Repl. 2006).

However, prior to Act 1569 of 1999, a trial court lost subject-matter jurisdiction to modify or amend an original sentence once it was put into execution. Ark. Code Ann. § 5-4-301(d) (Repl. 1997); *Gates v. State*, 353 Ark. 333, 107 S.W.3d 868 (2003). A sentence is put into execution when a trial court issues a judgment of conviction or a commitment order. *Id.*; *Bagwell v. State*, 346 Ark. 18, 53 S.W.3d 520 (2001). A plea of guilty, coupled with a fine and either probation or a suspended imposition of sentence, constitutes a conviction, thereby depriving a trial court of jurisdiction to amend or modify a sentence that has been executed. *Gates*, *supra*; *Pike v. State*, 344 Ark. 478, 40 S.W.3d 795 (2001).[2]

The original offense committed by Reeves occurred in 1995, and the judgment was entered August 9, 1995, which put the sentence into execution. Therefore, as a pre-Act case, the sentence cannot be modified after execution. The pertinent question is whether the trial court's 2007 order modified the 1995 judgment. The Arkansas Supreme Court's holding in *Gates*, provides the answer.

Gates was a pre-Act case where the defendant pled guilty to a class Y felony (which carried a maximum sentence of ten to forty years or life) but was sentenced to five years' probation. *Gates*, *supra*. Upon revocation, the defendant was sentenced to six years' imprisonment and a fifteen-year suspended sentence. *Id.* On appeal, our supreme court held

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[2]This law was changed by Act 1569 of 1999, which amended Arkansas Code Annotated section 5-4-301(d) to permit modifications to probated sentences that have been placed into execution. *See* Ark. Code Ann. § 5-4-301(d) (Supp. 2001). It has been held that Act 1569 does not apply retroactively to offenses committed prior to April 15, 1999, the effective date of the act. *Moseley v. State*, 349 Ark. 589, 80 S.W.3d 325 (2002).

that the six years' imprisonment was not a modification because it was within the original sentence; however, the fifteen-year suspended sentence imposed an additional condition and was a modification of the sentence originally executed. *Id.* at 338, 107 S.W.3d at 870–71. As such, the court reversed and remanded, holding that the trial court exceeded its authority and lacked subject-matter jurisdiction to modify the original sentence. *Id.* at 339, 107 S.W.3d at 871.

In the instant case, the 2007 order sentenced Reeves to two years' imprisonment. This was not a modification of the original sentence because it is within the term of imprisonment authorized for a class D felony.[3] *See Gates*, *supra*; *see also* Ark. Code Ann. § 5-4-309(f) (Repl. 1993) (providing that when the imposition of a sentence has been suspended, upon breach of the terms of probation, the trial court has the right to impose the original sentence as announced).

However, the 2007 order also sentenced Reeves to an additional four-and-one-half-year suspended imposition of sentence. The four-and-one-half year suspended sentence was "an additional condition to the original executed sentence." *Gates*, 353 Ark. at 338, 107 S.W.3d at 871 (citing *Harmon v. State*, 317 Ark. 47, 876 S.W.2d 240 (1994)). We therefore hold that the trial court lacked subject-matter jurisdiction to modify the original sentence by adding the four-and-one-half year suspended imposition of sentence. Accordingly, we reverse the 2007 order and remand for sentencing consistent with this decision.

Reversed and remanded for sentencing.

GLADWIN and MARSHALL, JJ., agree.

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[3]Pursuant to Arkansas Code Annotated section 5-4-401(a)(5), the maximum prison sentence for a class D felony is six years.