ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CACR06-929

March 7, 2007

ABU R. HASSAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

AN APPEAL FROM PULASKI COUNTY CIRCUIT COURT
[CR04-570]

HON. JOHN LANGSTON, JUDGE

AFFIRMED AS MODIFIED

On April 21, 2006, the Pulaski County Circuit Court sentenced Abu Hassan to serve a term in the county jail for failure to pay fines and court costs. He appeals from the order, contending that the State failed to prove that he purposefully refused to pay the fines imposed upon him. He also contends that the circuit court erred in failing to order him to be incarcerated for a specific number of days. Because the judgment and commitment order does not explicitly state appellant's period of incarceration, we modify the judgment and commitment order to reflect a twenty-four-day sentence in the county jail and affirm the circuit court's decision.

In August 2004, appellant was convicted of driving while intoxicated, first offense, and several other traffic offenses, for which he was assessed a total of $1190.00 in fines and

court costs.[1] On April 21, 2006, appellant appeared before the circuit court to determine whether he should be incarcerated for failure to pay those fines and costs. At the hearing, the State produced documentary evidence showing that appellant had only paid $200.00 of the $1190.00 the court had ordered him to pay.

Appellant acknowledged that he still owed $990 as a result of his DWI conviction. According to his testimony, he started drawing disability in 1974 because of a back injury sustained in an automobile accident. He is still affected by the injuries, including damaged vertebrae, four plates in his pelvis bone, and problems with his hip socket and knees. Appellant once worked as a security guard earning $6.00 an hour, but he only kept the job for about nine months. He is currently unemployed, but he receives $891.00 per month in social security benefits. When asked about his expenses, appellant stated that he was taking medication for diabetes.

When asked why he had not paid the fines, appellant remarked that he had "a hard time surviving as it is" and that he felt that he was not treated justly. He claimed to have only one dollar "to go home on." When asked if he had anything else to say, appellant remarked:

> Well, I would try to pay, you know, like I already have been. I paid $200.00 on it here recently, and I could pay $100.00 a month on it. But I just don't feel like I'm being treated [with] justice. I pleaded not guilty and that's it. My public defender didn't even put me on the stand. So I don't know. Like I said, I was just going on

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[1]This court affirmed the conviction in a no-merit appeal. *See Hassan v. State*, CACR 04-1198 (Ark. App. June 29, 2005) (not designated for publication).

> to try to satisfy you all, and I'll pay $100.00 a month. But that's not what I feel that's right. I don't feel that I'm getting justice at all.

At the end of appellant's testimony, the court ordered that appellant be incarcerated to serve out his fine. The judgment and commitment order notes "Def committed on fn/cc $990.00," but it does not specify the period appellant is to spend in county jail.

Appellant argues that the circuit court erred in finding that he had purposefully refused to pay the fines and costs imposed upon him. He acknowledges that Ark. Code Ann. § 5-4-203(a)(3)(A) (Repl. 2006) authorizes a court to incarcerate a person for failure to pay assessed fines or costs, but he contends that between his disability and financial status, the circuit court erred in finding that he purposefully failed to pay his fines and court costs.

Arkansas Code Annotated section 5-4-203(a)(3)(A) places the onus on the defendant to show that his default was not due to a purposeful refusal to pay. The statute reads:

> The court may order the defendant imprisoned in the county jail or other authorized institution designated by the court until the fine or costs or a specified part of the fine or costs is paid unless *the defendant shows* that his or her default was not attributable to a:
>
> (i) Purposeful refusal to obey the sentence of the court; or
>
> (ii) Failure on the defendant's part to make a good faith effort to obtain the funds required for payment.

(Emphasis added.) Once the State has presented a prima facie case that a defendant has failed to pay fines and costs, the burden is on the defendant to show that his failure to pay was not the result of a purposeful refusal to pay or a failure to make a good faith effort to obtain the funds for payment.

Here, appellant explained his financial circumstances, which may indeed be poor due

to his disability. However, he also explained that he was going to attempt to pay $100.00 per month but felt that it was not right because he was not receiving justice. The circuit court could have reasonably concluded that appellant did not pay the fines, not because he could not, but because he felt justified in not doing so. Under these circumstances, we affirm the circuit court's decision.

Next, appellant argues that the circuit court erred in failing to order that he be incarcerated for a specific number of days. He correctly asserts that Ark. Code Ann. § 5-4-203(a)(3)(B) limits sentences to one day for every $40.00 in outstanding fines and costs, not to exceed thirty days in the case of a misdemeanor. The judgment and commitment order does not specify appellant's exact sentence; it only notes that he is committed for failure to pay $990.00 in fines and costs. At trial, the court noted that appellant would be ordered to serve out his fine. In light of this, we modify appellant's judgment and commitment order to reflect a twenty-four-day term in the county jail. *Harness v. State*, 352 Ark. 335, 101 S.W.3d 235 (2003); *Turner v. State*, 88 Ark. App. 40, 194 S.W.3d 225 (2004), *overruled on other grounds by Bush v. State*, 90 Ark. App. 373, 206 S.W.3d 268 (2005) (both cases exercising the appellate court's authority to modify an illegal sentence without remanding for resentencing by the trial court).

Affirmed as modified.

GLADWIN and ROBBINS, JJ., agree.