

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 10-341

CHARLES LANELL WILLIAMS
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JUNE 29, 2011

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT,
[NO. CR-09-94]

HONORABLE ROBERT E.
MCCALLUM, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

This no-merit appeal comes before this court a second time. The appellant, Charles Lanell Williams, was convicted by a jury of aggravated assault on a family or household member, and was sentenced to six years in prison with a five-year enhancement because the assault was committed in the presence of his four-year-old son. In the first no-merit brief, which was accompanied by a motion to withdraw, appellant's counsel discussed all but one of the adverse rulings and provided sufficient explanations as to why those rulings could not support a meritorious appeal. Mr. Williams initially declined to file any pro se points. In our first opinion, we ordered Mr. Williams's counsel to rebrief the case and discuss the remaining adverse ruling, which was the trial court's denial of counsel's request to run his sentence concurrently with the prison sentence he was already serving. *See Williams v. State*, 2011 Ark. App. 35.

In accordance with our directive on remand, Mr. Williams's counsel has now filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court. Mr. Williams has now elected to file pro se points. We affirm.

Pursuant to our no-merit rules, Mr. Williams's counsel's brief discusses all of the adverse rulings. We addressed each of these rulings, save one, in our previous opinion, and agreed that none could support a merit brief. Appellant's counsel has now briefed the previously-omitted adverse ruling pertaining to sentencing.

After the jury sentenced Mr. Williams to an eleven-year prison term, Mr. Williams requested that it be ordered to run concurrent with the term he was already serving for a prior offense. That request was denied without explanation, and appellant's counsel asserts that there can be no meritorious challenge to the trial court's decision to run the sentences consecutively. We agree.

Arkansas Code Annotated section 5-4-403(a) (Repl. 2006) provides that multiple sentences shall run concurrently unless, upon recommendation of the jury or the court's own motion, the court orders the sentences to run consecutively. It is well established that the question of whether sentences run consecutively or concurrently lies solely within the province of the trial court. *Throneberry v. State*, 2009 Ark. 507,³⁴² S.W.3d 269. The exercise of that discretion will not be altered on appeal unless it is clearly shown to have been abused. *Id.* The appellant assumes a heavy burden of demonstrating that the trial court failed to give due consideration to the exercise of its discretion in the matter of consecutive sentences. *Id.*

The supreme court has repeatedly held that there is no rule that requires a trial court to set forth in writing that it exercised discretion, nor is there a requirement that the court explain its reason for running sentences consecutively. Applying these principles to the present case, we agree that any challenge on appeal to the trial court's exercise of its discretion in this regard would be frivolous.

Upon rebriefing the case, Mr. Williams's counsel has also discussed a defense objection raised during the State's closing argument. During closing argument, the appellant objected to the prosecutor's mischaracterization of the injuries inflicted on the victim. This objection was effectively sustained and did not result in an adverse ruling because the trial court gave curative relief, instructing the jury that closing remarks were not evidence and that the jurors should rely on their understanding of the facts in evidence.

We now turn to the *pro se* points submitted by Mr. Williams. For his first point, Mr. Williams complains about the fact that he was in shackles while being transported to and from the courtroom. He cites *Deck v. Missouri*, 544 U.S. 622 (2005), where the supreme court held that courts may not routinely place defendants in visible restraints during the guilt or penalty phase of the trial, that shackling must be specifically justified by the circumstances, and that no showing of prejudice is required to make out a due-process violation from the routine use of visible shackles.

The case at bar is distinguishable from *Deck, supra*, because the trial court specifically gave the justification that Mr. Williams was presently an inmate on other charges and that the present charges arose from an attack on his wife during her visitation with him in the jail.

For security purposes, Mr. Williams was escorted to and from the courthouse in shackles, but the shackles were not to be viewed by the jury. Despite appellant's claim below that the jury had seen him shackled during a recess, we noted in our first opinion that there was a legitimate security risk and, because the evidence of appellant's guilt was overwhelming and a video of the attack was played to the jury, there was no indication that the jury's observation of the shackles affected the outcome of the trial. We thus held during our first review of the case that this presents no grounds for a merit appeal, and that holding is now the law of the case.

In his remaining pro se points, Mr. Williams directs us to testimony during the guilt phase that he did not stab the victim, and testimony during the sentencing phase that he had been a good prisoner up until the day he attacked his wife. To the extent Mr. Williams is challenging the sufficiency of the evidence, we explained in our first opinion that substantial evidence supports the verdict, as was asserted by appellant's counsel. The testimony about him being a good prisoner was offered for sentencing purposes, and it did not constitute an adverse ruling. Moreover, it cannot be a basis for reversal given that the sentence returned by the jury was well within the permissible sentencing range. See *Dooly v. State*, 2010 Ark. App. 591.

Based on our review of the record and the briefs presented, we conclude that there has been compliance with Rule 4-3(k)(1) and that the appeal is without merit. Consequently, appellant's counsel's motion to be relieved is granted and the judgment is affirmed.

Affirmed.

GRUBER and ABRAMSON, JJ., agree.