Cite as 2011 Ark. App. 547

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 11-119

	Opinion Delivered September 21, 2011
LEROY HARVEY STEVENSON APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, WESTERN DISTRICT
V.	[NO. CR-2008-0702]
	HONORABLE CINDY THYER, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

ROBIN F. WYNNE, Judge

Appellant Leroy Stevenson appeals the circuit court's denial of his motion for a new trial. The basis of appellant's argument is that he was denied the effective assistance of counsel. Because appellant's arguments are unpreserved, we affirm.

Appellant was convicted of rape following a bench trial held on September 25, 2008, in which he was represented by Ms. Terry Jones, a public defender. Prior to the trial, appellant stated on the record that he waived his right to a jury trial. The defense then proceeded on the theory that the victim, a seventeen-year-old mentally challenged boy, had consented to the sexual contact. Appellant was found guilty and sentenced as an habitual offender to fifty years in the Arkansas Department of Correction.

On October 22, 2008, appellant filed a pro se motion for new trial in which he alleged ineffective assistance of counsel. Specifically, appellant claimed that his attorney failed to subpoena Ida May Anderson and Verlene Vann as alibi witnesses and failed to obtain any

expert witnesses. He also claimed that he was coerced into foregoing a jury trial. Appellant further alleged, without stating specific grounds, his actual innocence, prosecutorial misconduct, and the trial court's abuse of discretion. The motion was deemed denied, and appellant appealed to this court. On February 11, 2010, we remanded this case with instructions to the circuit court to conduct a hearing and rule on appellant's motion for new trial.

At that hearing, appellant testified that, while preparing for his trial, he and Ms. Jones discussed alibi witnesses and that he asked her to subpoena Eula May Anderson, Ida May Anderson, Verlene Vann, and "everybody on Hope Street." He stated that these witnesses would have prevented him from being convicted. Appellant further testified that he told Ms. Jones on the day before the trial that he wanted an expert witness to refute the DNA evidence. Regarding his decision to waive a jury trial, appellant testified that he felt Ms. Jones had tricked him into agreeing to a bench trial.

Ms. Jones testified that appellant had given her several names of people he wanted to subpoena and that she had gone to Hope Street to speak with those people regarding the possibility of testifying as character witnesses. Based on those interviews, Ms. Jones determined that calling those witnesses would be detrimental to appellant's case. Therefore, she did not subpoena any of them. Ms. Jones testified that appellant's defense theory was that the victim was competent to consent.

Of the two people mentioned in appellant's motion, only one—Ida May Anderson—testified at the hearing on the new-trial motion. She stated that she would not

have wanted to testify as a character witness because the victim in this case is her cousin. Another witness, Paula Shepard, testified that she could not provide appellant with an alibi but that she would have testified regarding his good character had she been subpoenaed. Eula May Anderson likewise testified that she thought appellant was a good person, as did Louise Lindsey, but neither had received a subpoena. Appellant's brother, Jerry Stevenson, testified that appellant was a kind person, but when asked about the DNA evidence against appellant, Mr. Stevenson stated that such evidence might change his opinion.

In a particularly thorough and well-written order entered on October 5, 2010, the circuit court denied appellant's motion for a new trial. The order described in great detail the history of the case, the issues before the court, the testimony at the hearing, and the court's reasoning in denying appellant's motion. The court found that Ms. Jones's decisions regarding witnesses constituted trial strategy and that appellant's claims regarding ineffective assistance of counsel had no merit. The court further found that, even if appellant's late-named witnesses had testified at his trial, the outcome would have been no different. Appellant filed a timely notice of appeal.

For his appeal, appellant abandons the grounds alleged in his motion and argues only that a new trial should have been granted based on his counsel's failure to subpoena any character witnesses for the penalty phase of the trial. The decision whether to grant or deny a motion for new trial lies within the sound discretion of the trial court, and we will not reverse a trial court's denial of such a motion unless there is a manifest abuse of discretion. *Jones v. State*, 355 Ark. 316, 320, 136 S.W.3d 774, 777 (2003). Moreover, we will not reverse

a trial court's factual determination on a motion for a new trial unless it is clearly erroneous. *Id*. For issues of witness credibility, we defer to the trial judge. *Id*.

Appellant admits in his brief that the issue of subpoenas for penalty-phase witnesses was not raised in his motion for new trial, and he acknowledges that this court does not consider issues raised for the first time on appeal. Nevertheless, appellant contends—without supporting authority—that we should consider his argument. Appellant correctly states that we will not consider arguments on appeal that were not raised at the trial-court level. *Pyle v. State*, 340 Ark. 53, 58, 8 S.W.3d 491, 495 (2000). A party is bound on appeal by the nature and scope of the objections and arguments presented below. *Reed v. State*, 2011 Ark. App. 352, at 11, 383 S.W.3d 881, 887. This court has refused to consider a claim of ineffective assistance of counsel when the surrounding facts and circumstances of the claim were not fully developed before the trial court. *See Pyle*, 340 Ark. at 64, 8 S.W.3d at 498. Because appellant's claim regarding his attorney's failure to procure penalty-phase witnesses was not raised before the trial court, this argument is not preserved for our review.

Affirmed.

GLADWIN and GRUBER, JJ., agree.

Alvin Schay, for appellant.

Dustin McDaniel, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellee.