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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-210

TERRY WAYNE BARTLETT APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered:** December 13, 2017 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. 66FCR-10-855] HONORABLE J. MICHAEL FITZHUGH, JUDGE AFFIRMED

RAYMOND R. ABRAMSON, Judge

Terry Wayne Bartlett appeals the revocation of his suspended sentence. Bartlett claims that his trial lawyer rendered ineffective assistance of counsel because he presented no theme, no evidence, no defense, no mitigation evidence, and no plea for leniency. Having reviewed the record before us, we conclude that Bartlett's argument is not preserved for appeal and, therefore, we affirm.

Bartlett pleaded guilty in 2011 to failure to comply with the reporting requirements of the Sex Offender Registration Act, a Class C Felony. The plea consisted of a two-year prison sentence and eight years' suspended imposition of sentence. Bartlett completed his two-year sentence of imprisonment on December 14, 2012. The State petitioned to revoke Bartlett's suspended imposition of sentence on July 5, 2016, alleging that Bartlett had violated the terms of his suspended sentence by committing robbery and battery in the

second degree; failing to pay court costs, fees and fines of $1000; and failing to register as a sex offender.

At the revocation hearing, the victim, Glenn Forte, testified that Bartlett beat him with a can of paint and a lamp, cut his leg with a saw, and stole money from him. Forte had hired Bartlett to perform repair work on his residence, and Bartlett stayed in a room in the residence until Forte told Bartlett that his services were no longer needed. Bartlett had been homeless when Forte hired him. Before the robbery and battery, Bartlett was staying in Forte's backyard. At the conclusion of the hearing, the circuit court revoked Bartlett's suspended imposition of sentence based on all grounds alleged in the petition and sentenced him to eight years in the Arkansas Department of Correction.

Bartlett appeals the revocation of his suspended imposition of sentence on the sole ground that his counsel did not provide effective legal assistance. Bartlett raises this issue for the first time on appeal. Bartlett also raises for the first time on appeal the issue that he is in an impossible situation because his trial counsel filed a notice of appeal before he was appointed appellate counsel, thereby preventing him from having the opportunity to file a posttrial motion asserting ineffectiveness of counsel. He alleges that the ineffectiveness of his counsel is apparent on its face and meets an exception that the claim may be considered on appeal without first being raised in the circuit court.

Claims of ineffective assistance of counsel must be raised at the circuit court for the appellate courts to consider the claims. *Gordon v. State*, 2015 Ark. 344, at 4, 470 S.W.3d 673, 675. Appellate courts will not consider ineffective-assistance-of-counsel claims on direct appeal unless the circuit court considered the issue. *Id.*; *see also Ratchford v. State*, 357

Ark. 27, 159 S.W.3d 304 (2004); *Anderson v. State*, 353 Ark. 384, 108 S.W.3d 592 (2003); *Willis v. State*, 334 Ark. 412, 977 S.W.2d 890 (1998); *Reed v. State*, 323 Ark. 28, 912 S.W.2d 929 (1996). The reason for this rule is that an evidentiary hearing and finding as to the competency of appellant's counsel by the circuit court better equips the appellate court on review to examine in detail the sufficiency of the representation. *Ratchford*, *supra* (citing *Willis*, *supra*; *Reed*, *supra*). We decline to recognize an exception to the rule that ineffective-assistance-of-counsel claims must first be raised at the circuit court; therefore, Bartlett's argument is not preserved for this court's review.

Bartlett attempts to distinguish *Ratchford*, arguing that the record at Bartlett's hearing makes clear on its face that trial tactics and strategy are not reasonable explanations for his counsel's decisions and inactions. However, *Ratchford* directly addresses this argument. There, the appellant sought reversal of his conviction on the sole ground that he received ineffective assistance of counsel at his trial. *Id.* at 32, 159 S.W.3d 307. Ratchford did not raise the issue to the circuit court. *Id.* He argued that his counsel's ineffectiveness was apparent on its face and thus warranted an exception to the rule. *Id.* In arguing for this exception, Ratchford contended that his trial counsel's "across-the-board inaction" could not be part of a "rational trial strategy." *Id.* Our supreme court reiterated its longstanding policy that the facts surrounding a claim of ineffective assistance of counsel must be developed before appeal and the circuit court is in a better position to assess the quality of legal representation than an appellate court. *Id.* The *Ratchford* court declined to create this exception and affirmed the conviction because the defendant failed to raise the issue of

ineffective assistance of counsel at the circuit court. *Id.* Following the decision in *Ratchford*, we decline to recognize an exception for Bartlett on the facts of this case.

Bartlett further attempts to distinguish his case from *Ratchford* by arguing that he was placed in an impossible position in that his appellate counsel did not have an opportunity to raise the issue of ineffective assistance of counsel because his notice of appeal was filed by trial counsel approximately two months before appellate counsel was appointed. *Ratchford* also addresses this argument. In *Ratchford*, the notice of appeal was filed four days after the entry of the judgment of conviction. Ratchford argued that filing a Rule 37 petition at that juncture would unduly prolong his prison time. *Id.* Our supreme court rejected that argument, holding that Ratchford was not without a remedy, as he could have filed a Rule 37 petition rather than a direct appeal. *Id.* The same is true for Bartlett—he could have filed a Rule 37 petition instead of a direct appeal. Bartlett's appeal is identical to the appeal in *Ratchford*, and Bartlett can still file a Rule 37 petition. Therefore, his position is not impossible.

Bartlett also relies on *Tisdale v. State*, 311 Ark. 220, 843 S.W.2d 803 (1992), to support his claim that he meets an exception to the rule that ineffective-assistance-of-counsel claims will not be addressed for the first time on appeal. Specifically, Bartlett alleges that the circuit court in *Tisdale* applied an exception and addressed such a claim on direct appeal. In *Tisdale*, the circuit court considered several motions to remove trial counsel. After conviction, Tisdale filed a motion for a new trial arguing that counsel provided ineffective assistance, and our supreme court found that these motions preserved his claim. *Id.* *Tisdale* is clearly distinguishable from this case because Tisdale preserved his claim by raising the

issue at trial. Bartlett did not raise his claim at the circuit court and, therefore, it is not preserved on appeal.

Since Bartlett's claim of ineffective assistance of counsel was not raised to the circuit court, the issue cannot be considered on appeal. Therefore, we do not reach the merits of Bartlett's appeal.

Affirmed.

MURPHY and BROWN, JJ., agree.

Cullen & Co., PLLC, by: *Tim J. Cullen*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.