

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CACR10-1060

DECARLOS VANCE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** MARCH 30, 2011

APPEAL FROM THE MISSISSIPPI  
COUNTY CIRCUIT COURT,  
OSCEOLA DISTRICT  
[NO. CR-2008-104 DL]

HONORABLE DAVID N. LASER,  
JUDGE

AFFIRMED

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**JOSEPHINE LINKER HART, Judge**

Appellant, DeCarlos Vance, appeals from his 2010 conviction for delivery of a controlled substance, cocaine. He argues that the circuit court erred in ruling that the State could impeach him with certain evidence on cross-examination. We hold that because Vance did not testify, he did not preserve his argument for appellate review. Consequently, we affirm.

Vance filed a motion in limine to exclude two documents from evidence: a 2003 judgment and disposition order showing that he had pled guilty to committing the crime of delivery of a controlled substance, for which he received probation, and a 2005 judgment and commitment order showing that his probation had been revoked and that he had been sentenced to imprisonment. Vance further sought to exclude evidence of the reason for the revocation, which he asserted was his possession of cocaine in 2004.

During a hearing on Vance's motion, his counsel conceded that the 2003 judgment and disposition order would be admissible for impeachment purposes under Rule 609 of the Arkansas Rules of Evidence, but counsel asserted that neither the revocation nor the reason for the revocation was admissible for that purpose. The court ruled that each was admissible for impeachment purposes. The case proceeded to trial, and as Vance acknowledges in his brief, he did not take the stand. Thus, he was not impeached during the trial's guilt phase.<sup>1</sup>

On appeal, Vance argues that neither the revocation nor the reason for the revocation was admissible under Rule 609 for impeachment purposes because neither was a conviction. Vance, however, did not testify. In *Harris v. State*, 322 Ark. 167, 907 S.W.2d 729 (1995), our supreme court held that because the defendant did not testify at trial, the defendant had not preserved his impeachment argument for review. The court concluded that without a defendant taking the stand, it had no way of knowing whether the State would have sought to impeach the defendant, and the court could not assume that the circuit court's adverse ruling motivated the defendant's decision not to testify.

Given that Vance did not testify, the supreme court's holding in *Harris* controls our decision here. By not testifying, appellant did not preserve his impeachment argument for appellate review. Consequently, we affirm.

Affirmed.

ROBBINS and HOOFFMAN, JJ., agree.

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<sup>1</sup>We note that while Vance did testify during the sentencing phase of the trial, the admissibility of the evidence during this phase of the trial was not at issue on appeal.