

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR09-69

THOMAS HOLLOWAY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 16, 2009

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[No. CR-2007-528]

HONORABLE JOHN N.  
FOGLEMAN, JUDGE

AFFIRMED

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## LARRY D. VAUGHT, Chief Judge

Appellant Thomas Holloway was convicted by a Crittenden County jury of attempted first-degree murder after he stabbed his wife several times in the waiting room of a West Memphis doctor's office. Holloway waived sentencing by the jury. The trial court, after finding that he was a habitual offender with two prior violent felonies, sentenced him to forty years' imprisonment in the Arkansas Department of Correction. We affirm.

On appeal, Holloway does not challenge his conviction. He only argues that because his prior felonies occurred during a single criminal episode the trial court erred in considering both to enhance his sentence. This challenge is extremely narrow. We must simply determine whether two prior felonies that occurred at the same time and place constitute a single offense. In support of his argument he cites *Tackett v. State*, 298 Ark. 20, 766 S.W.2d 410

(1989), which did hold that two prior convictions arising from the same incident could not be used for enhancement purposes. However, in *Tackett* there is a critical factual distinction. The two prior convictions were for crimes that occurred in the same criminal episode as the conviction that was being enhanced. The court narrowly determined that concurrent convictions could not be used to enhance the *current* sentence. *Id.* at 20, 766 S.W.2d at 410. That is not what occurred in Holloway’s case.

Holloway had two prior armed-robbery convictions from the 1960s. Although the robberies occurred almost simultaneously, he robbed two separate victims. This factual predicate is similar to the one presented in *Smith v. State*, 283 Ark. 264, 266, 675 S.W.2d 627, 629 (1984). In *Smith*, our supreme court held that two robberies that occurred “in the same place at nearly the same time” with two distinct victims were two separate armed robberies. Likewise, Holloway’s robberies each involved a different victim. As such, under prevailing Arkansas law, he was guilty of two separate robberies.

Once this determination is made, we must only consider whether the trial court acted within its statutory authority to enhance Holloway’s sentence. Arkansas Code Annotated section 5-4-501(d)(1)(B) (Supp. 2007) states as follows:

A defendant who is convicted of a felony involving violence enumerated in subdivision (d)(2) of this section and who had previously been convicted of two (2) or more of the felonies involving violence enumerated in subdivision (d)(2) of this section . . . shall be sentenced to an extended term of imprisonment.

A simple reading of this statutory language shows that not only was the trial court permitted to enhance the sentence—it was obligated to do so. As such, we affirm the trial court in all respects.

Cite as 2009 Ark. App. 584

Affirmed.

HART and GRUBER, JJ., agree.