

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-137

FELANTA WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 24, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR 06-2452]

HONORABLE CHRIS PIAZZA, JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Felanta Williams appeals his twenty-five-year sentence fixed by a jury in Pulaski County Circuit Court for the crime of attempted murder. For reversal, he contends that the trial court erred in allowing the State at the sentencing trial to introduce into evidence the record of the disciplinary infractions he received during his imprisonment in the Arkansas Department of Correction. We affirm.

In October 2006, appellant stood trial for the attempted murder of Joy Hodge. A jury found appellant guilty of that offense, and he received a sentence of twenty-seven years in prison. The sentence included enhancements for being an habitual offender and employing a firearm during the commission of the offense. Appellant pursued an appeal, but we affirmed appellant's conviction in an unpublished opinion. *Williams v. State*, CACR 07-124 (Oct. 3, 2007).

Subsequent to the appeal, appellant filed a petition under Rule 37 of the Arkansas Rules of Criminal Procedure alleging ineffective assistance of counsel. The trial court granted the motion as to sentencing only and later convened a jury to determine an appropriate sentence. At the sentencing trial, the State presented the testimony of Gleen Overknight, the record supervisor at the Cummins Unit. Over appellant's objection, the trial court allowed Overknight to recount the disciplinary infractions appellant received beginning in 1994 during his incarceration for aggravated robbery and theft of property.¹ Overknight testified to numerous violations ranging from assault and battery to "out of place assignments," failure to obey orders, insolence, unexcused absences from work, use of obscene language, destruction of property, a banding-together demonstration, resisting apprehension, creating unnecessary noise, indecent exposure, and making sexual proposals.

Appellant's sole argument on appeal concerns Overknight's testimony. He contends that many of the infractions occurred more than ten years ago and that the evidence does not qualify as aggravating circumstances under Arkansas Code Annotated section 16-97-103 (Repl. 2006). We find no merit in this argument as the testimony constitutes relevant character evidence under the statute.

¹ We also affirmed those convictions in an unpublished opinion. *Williams v. State*, CACR 94-1164 (Oct. 11, 1995).

The admissibility of proof in the penalty phase of trial is governed by Arkansas Code

Annotated section 16-97-103, which provides in pertinent part:

Evidence relevant to sentencing by either the court or a jury may include, but is not limited to, the following, provided no evidence shall be construed under this section as overriding the rape shield statute, § 16-42-101:

. . . .

(5) Relevant character evidence;

(6) Evidence of aggravating and mitigating circumstances. The criteria for departure from sentencing standards may serve as examples of this type of evidence[.]

Rule 404 of the Arkansas Rules of Evidence speaks to the admission of character evidence in the guilt phase of a criminal trial. To be admissible under that rule, evidence of other crimes, wrongs, or acts must be independently relevant to make the existence of any fact of consequence more or less probable than it would be without the evidence. *See Lamb v. State*, 372 Ark. 277, 275 S.W.3d 144 (2008). On the other hand, section 16-97-103(5) generally permits the admission of relevant character evidence at sentencing. *Crawford v. State*, 362 Ark. 301, 208 S.W.3d 146 (2005). Our supreme court has held that character evidence which might not be admissible at the guilt stage of trial under Rule 404 can be admitted during the sentencing phase of trial pursuant to section 16-97-103(5). *MacKool v. State*, 365 Ark. 416, 231 S.W.3d 676 (2006); *Crawford, supra*. The court has also observed that allowing the introduction of character evidence promotes the purpose of the sentencing statutes, which is to allow the court or a jury to consider all evidence relevant to sentencing, even if the

evidence would not have been admissible during the guilt phase of trial. *Id.* The trial court has wide discretion in admitting evidence of other crimes or wrongs, and its decision will not be reversed absent an abuse of discretion. *Hill v. State*, 318 Ark. 408, 887 S.W.2d 275 (1994). In *MacKool, supra*, the supreme court upheld the admission of testimony at sentencing concerning a thirty-two-year-old murder investigation and a ten-year-old expunged conviction. The court held that proof of these prior acts was relevant character evidence admissible under section 16-97-103(5). In the case at bar, evidence of appellant's prison infractions provided proof of his character and was relevant to the jury's determination of an appropriate punishment for his crime. Moreover, we will not reverse in the absence of a demonstration of prejudice. *Diemer v. State*, 365 Ark. 61, 225 S.W.3d 348 (2006). Appellant demonstrated no prejudice from the admission of the evidence because he received a sentence within the statutory range. *See Buckley v. State*, 349 Ark. 53, 76 S.W.3d 825 (2002). We find no abuse of discretion in the trial court's ruling and affirm.

Affirmed.

KINARD and BAKER, JJ., agree.