

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-744

RALPH LEE ST. CLAIR,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered FEBRUARY 24, 2010

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CR-05-982-1]

HONORABLE ROBIN FROMAN
GREEN, JUDGE,

AFFIRMED

KAREN R. BAKER, Judge

Appellant Ralph Lee St. Clair challenges his conviction for failure to appear for trial on November 29, 2005. He alleges two points of error: (1) The trial court erred in declining to dismiss the charge for failure to appear on November 29, 2005, because the underlying felony was defective in that it arose out of a failure to appear at a revocation hearing; (2) The trial court erred in continuing to hear a case that had already been closed by order of the court. We conclude that his claim that he could have been acquitted on his failure to appear at a revocation hearing held in April 2005, had he appeared at the November 2005 trial, has no bearing upon whether he was guilty of failing to appear at the November trial. Accordingly, we find no error and affirm.

On March 20, 2009, the Benton County Circuit Court convicted appellant of failure to appear for a trial on November 29, 2005, a Class C felony. He was sentenced as a habitual offender to 10 years' incarceration in the Arkansas Department of Correction. Appellant argues that his failure-to-appear charge arose from his not attending a hearing in April that he believed should have been removed from the docket. He explains that the State had filed two petitions to revoke his probation based on two separate violations. He contends that the two petitions were merged together and disposed of at a hearing in March, which was the earlier of the two scheduled hearings. He argues that since the second probation violation was addressed in the first of the two scheduled hearings, there was no longer any matter pending before the trial court when the April docket was called. Accordingly, despite the fact that the case number was listed on the docket, there was no matter actually pending for the trial court to act upon that day. He argues that since the two petitions were merged and his probation was extended following the March hearing, that the trial court erred in proceeding on a case that was closed.

Despite appellant's argument regarding his failure to appear in April, appellant admits that he was in court on August 15, 2005, for his arraignment on that charge, and that he was specifically instructed to appear for a jury trial on November 29, 2005. There is no dispute that appellant was charged with a failure to appear for trial on November 29, 2005, a Class C felony.

Appellant urges that he could not have been charged with a failure to appear arising out of an April 2005 probation revocation proceeding, as a failure to appear “does not apply to an order to appear imposed as a condition of suspension or probation pursuant to § 5-4-303 or an order to appear issued prior to a revocation hearing pursuant to § 5-4-310.” Ark. Code Ann. § 5-54-102(d) (Repl. 2005).

Thus, he argues that because the statute specifically prohibits the State from charging appellant with a failure to appear on his probation revocation hearing, the State had no authority to charge appellant with the failure to appear in April. He further reasons that since the State had no authority to charge him for not attending the April hearing, there was never a valid underlying felony to support the charge set for trial on November 29, 2005.

If appellant had appeared on November 29, 2005, as instructed, he certainly could have challenged the April 2005 failure to appear. However, defenses he may have asserted regarding his failure to appear in April have no bearing upon whether the evidence was sufficient to support the charge that he failed to appear on November 29. Appellant was convicted of failing to appear on November 29, 2005, and the record clearly establishes that appellant was in court when the trial judge instructed him to appear on November 29, that he was working on the day of court, and that he had transportation to court. Accordingly, we hold that substantial evidence supports appellant’s conviction for failure to appear.

Affirmed.

Cite as 2010 Ark. App. 195

GLADWIN and MARSHALL, JJ., agree.