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ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-21-331

MICHAEL ANTHONY WILLIAMS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered March 2, 2022

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23CR-20-564]

HONORABLE CHARLES E.
CLAWSON III, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Michael Williams appeals the sentencing order entered by the Faulkner County Circuit Court on March 19, 2021, pursuant to which he was sentenced to fifteen years' imprisonment. He argues that during sentencing, the trial court (1) improperly admitted irrelevant evidence of purported criminal conduct in a subsequent unrelated case and (2) made unsupported findings of fact based on the improperly admitted evidence. We affirm.

I. Facts and Procedural History

On June 1, 2020, Williams was arrested and charged by criminal information with illegal possession of a firearm, second-degree battery, second-degree false imprisonment, and resisting arrest; he was also charged as a habitual offender. The charges stemmed from an incident that occurred on May 29 involving Williams; his ex-girlfriend, Sarah O'Dell; and several police officers.

On June 12, Williams was involved in another domestic dispute, this time with his parents, and this dispute also involved police officers. After an extended fight with officers, which continued during transport to the jail, Williams had to be taken to the hospital to be sedated.

On February 24, 2021, Williams pleaded guilty to second-degree battery, false imprisonment, and resisting arrest in connection with the May 29 incident. The trial court granted a *nolle prosequi* motion for the charge of illegal possession of a firearm. He signed a plea agreement on March 17, and on the same day, the trial court held a sentencing hearing.

At the sentencing hearing, O'Dell testified that on May 29, 2020, Williams had been involved in a domestic dispute with her—who at the time was his pregnant girlfriend—over her wanting to leave their shared home. During the course of the dispute, Williams prevented O'Dell from leaving and took her cell phone. Some of O'Dell's friends arrived at the home to help her move, and they called the police. O'Dell explained that officers responded and eventually broke a window in the door, which resulted in O'Dell being able to move a mini fridge blocking that door and leave the house.

The State also called as witnesses two Conway police officers who had responded to the May 29 incident. Deputy Charleton McCall was the first police officer to arrive. Two other officers, Sergeant Hollis and Deputy Lavrinc, came to assist. When officers arrived, Williams was sitting on the porch yelling and cursing at them, saying that they had no business being there and needed to leave. He went inside the house and refused to allow O'Dell to exit the home. During the course of the struggle that followed to extricate Williams from inside the house, Williams was tased, but not before he kicked and hit both

Hollis and McCall causing physical injuries to such an extent that they both missed work. Specifically, McCall sustained pulled muscles in his back, and he stated that Williams continued to fight them even as they were handcuffing him. McCall noted that based on the amount of fighting Williams was engaging in, the officers suspected that he might be on drugs.

Hollis testified that everyone involved was bloody by the time Williams had been subdued and that he personally sustained the following injuries: his teeth were sticking through his lip, he sustained a black eye, there were abrasions all over the side of his face, his legs and arms were cut to pieces, and his neck still hurts. He explained that he had been doing this job since 2003, that this was the worst fight he had ever been in, and that he thought Williams was going to kill him.

The State also called a witness involved in another alleged incident involving Williams—Corporal Corderro Earls—who responded to a June 12, 2020 call involving Williams and his parents in Searcy, Arkansas. The following exchange took place at the outset of his testimony:

MR. WALL: Corporal, please state your name for the record?

CORP. EARLS: Corporal Corderro Earls.

MR. WALL: And where are you employed?

CORP. EARLS: Searcy Police Department.

MR. ROLFE: Your Honor, could we take a—Just object to this officer's testimony. I believe he will be testifying to an incident that occurred after this case, Your Honor, a separate case that I don't feel relevant and should have any bearing on this sentencing hearing. So, I would just ask that any testimony regarding an incident that occurred after this case should not be admitted.

MR. WALL: And Your Honor, the State's response would be that this is other relevant character evidence that the Court can hear for purposes of sentencing.

THE COURT: I would agree. Your objection will be overruled.

Corporal Earls then described the incident during which he and two other officers had to apprehend Williams during a domestic dispute involving his father. The testimony described the officers' having difficulty subduing Williams even after tasing him multiple times and ambulance-service personnel injecting him with a large dose of ketamine. Despite the previous objection to Corporal Earls's testimony, Williams's counsel did not cross-examine him.

The State, without objection from Williams, admitted eight exhibits that consisted of sentencing orders from various felony and misdemeanor convictions and a "certified Pen Pack from the Arkansas Department of Corrections that details the earlier convictions that were read in other than the misdemeanor conviction."

The trial court announced its sentence in the following colloquy:

THE COURT: Well, so I received the information packet from the presentence investigation and reviewed that fairly thoroughly. I went through and made notes, also my own notes on his prior convictions, actually had all of the convictions that the State had provided to me as State's 1 through 5, I believe? No, 1 through 7, which the seventh being the misdemeanor conviction, I believe, for the harassment.

I believe that the role of the criminal justice system is to rehabilitate when possible, to help before you necessarily punish. One of the most obvious things that jumps out to me in Mr. Williams's case is that he's had those opportunities. And I think that he's been before many, many judges in similar circumstances and it looks like he's been provided those

opportunities. He's been provided probation; he's been provided suspended impositions of sentences. He's been, in fact, in looking over this and please correct me if I'm wrong, when this particular incident was committed, he was on parole. He was on probation out of two separate cases out of Pulaski County that he had just received in the prior year. He was also under an SIS from the 2015-62 case if I'm not mistaken.

So, the concern that I have with Mr. Williams is what seems to be in his character is that he has frequent law enforcement contact that typically either ends in violence toward the officers or he puts them in a position where harm can be done by fleeing, by resisting, those types of situations, and unfortunately there's a gun that's usually involved.

The court's concern in light of everything is that it seems that Mr. Williams has, I mean, I can appreciate the last couple of months that he's doing better but over the course of the last several years, it looks like it's almost ramping up.

And so that's the worry that I have. And I think at some point it is the court's duty to protect those that protect everybody else. So, in light of that, we have the two misdemeanors; is that correct?

MR. WALL: Yes, sir. The false imprisonment, a misdemeanor, and resisting arrest, a misdemeanor.

THE COURT: Mr. Williams, if you'd stand up for me, please? I don't see if there's any reason we can go ahead and impose sentence now.

Mr. Williams, I've thought very long and hard about this. This is one of the most difficult things, but you've been in this position before so here we go.

The leniency that I think that we've shown to you in this particular case is the fact that you weren't charged with multiple counts of battery 2nd against law enforcement officers. This Court does not understand why multiple charges were not filed, so I'm limited in the punishment that I could give you.

But based on your criminal history and the decisions that you made, this Court is going to give you a year for each one of the misdemeanors, and it's also going to impose the

maximum sentence 15 years in the Department of Corrections for the Battery 2nd. Anything else?

The resulting sentencing order was filed on March 19, and Williams filed a timely notice of appeal on April 19.

II. *Analysis*

A. Relevancy of Corporal Earls’s Testimony

This court stated in *Montgomery v. State*, 2019 Ark. App. 376, at 6, 586 S.W.3d 188, 193–94:

The decision to admit or exclude evidence is within the sound discretion of the trial court, and we will not reverse a trial court’s decision regarding the admission of evidence absent a manifest abuse of discretion. The abuse-of-discretion standard does not simply require error in the trial court’s decision; rather, it requires that the lower court act improvidently, thoughtlessly, or without due consideration. Furthermore, we will not reverse an evidentiary ruling absent a showing of prejudice.

(Citations omitted.); *see also Stover v. State*, 2014 Ark. App. 393, at 6, 437 S.W.3d 695, 699.

Moreover, though claims of error typically must be preserved, no objection is required with respect to “errors affecting substantial rights, although they were not brought to the attention of the trial court. This exception does not, however, impose an affirmative duty and at most applies only to a ruling that admits or excludes evidence.” *Montgomery*, 2019 Ark. App. 376, at 5, 586 S.W.3d at 193 (citations omitted).

In his objection to Corporal Earls’s testimony, Williams’s counsel stated that the testimony would be wholly irrelevant to the issues at sentencing. The trial court denied the objection after the State asserted that it would be “relevant to character.”

Arkansas Code Annotated section 16-97-103(5) (Repl. 2016) provides guidance regarding the admissibility of evidence at sentencing—the controlling provision stating that

“*relevant* character evidence” is admissible. *Id.* (emphasis added). Accordingly, Williams emphasizes that even at a sentencing hearing, it is not enough that proffered evidence applies just to character—it must also be relevant. Ark. R. Evid. 401 (2021) defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Williams argues that Corporal Earls’s testimony about the June 12 incident did not meet this standard. He submits that (1) the State failed to explain what “fact of consequence” was made more or less probable by the testimony; (2) the trial court did not identify one in its ruling; and (3) the testimony in question likewise failed to provide a clear answer.

Williams also maintains that, given that the timing between the two incidents was only two weeks and the lack of evidence indicating that he had acted in this same manner outside this short period of time, the trial court’s holding that the testimony related to his character constitutes reversible error.

We disagree. In *Stover, supra*, we reiterated that “[e]vidence relevant to sentencing may include relevant character evidence or evidence of aggravating and mitigating circumstances.” *Id.* at 6, 437 S.W.3d at 699–700. As explained therein, subsequent similar crimes are relevant to show aggravating circumstances, the character of the defendant who is being sentenced, and lack of potential for rehabilitation. *Id.*

Here, the testimony in question falls squarely within the parameters discussed in *Stover*. Even Williams acknowledges that the June 12 violent encounter between him and police officers was similar to the May 29 incident that resulted in the charges for which he

was being sentenced. Although Williams argues that the trial court reached the wrong conclusion about the events in question, this does not address whether the trial court abused its considerable discretion in finding that the testimony was relevant. We hold that it did not and affirm on this issue.

B. Should Corporal Earls's Testimony Have Been Excluded
Under Ark. R. Evid. 403?

Williams next argues that, even if Corporal Earls's testimony was relevant, it should have been excluded as substantially more prejudicial than probative and otherwise violative of Arkansas Rule of Evidence 403 (2021). Rule 403 states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Williams argues that the admission of Corporal Earls's testimony violated Rule 403 because the evidence was unduly and unfairly prejudicial, confused the issues, wasted time, and was needlessly cumulative. Moreover, he submits that this evidence resulted in the trial court's making broad and erroneous factual findings about him based on the two incidents that occurred within a two-week span. In announcing sentencing, the trial court stated the following regarding Williams's criminal history:

So, the concern that I have with Mr. Williams is what seems to be in his character is that he has frequent law enforcement contact that typically either ends in violence toward the officers or he puts them in a position where harm can be done by fleeing, by resisting, those types of situations and unfortunately there's a gun that's usually involved.

Williams argues that he was sentenced to fifteen years' imprisonment in large part because the trial court made findings as to his history and conduct that simply are not

supported in the record. Additionally, Williams claims that this ties into the initial error of admitting Corporal Earls's testimony and demonstrates the resulting prejudice he suffered.

We hold that Williams did not preserve his Rule 403 challenge to the findings of the trial court at the conclusion of the sentencing hearing. In order to preserve a challenge to a sentence, a defendant must timely object to it when it is imposed. *E.g.*, *Cline v. State*, 2011 Ark. App. 315, at 3 (citing *Ladwig v. State*, 328 Ark. 241, 246, 943 S.W.3d 571, 574 (1997)), in which the supreme court held, "A defendant who makes no objection at the time sentence is imposed has no standing to complain of it." Williams failed to complain about, or object to, these statements by the trial court either at the end of the sentencing hearing or when his sentence was imposed, other than to claim credit for his time in jail. Accordingly, the issue is not properly before us for review.

Finally, Williams argues that any failure to object to the findings in question on his part should be excused under *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980). Pursuant to *Wicks* and Arkansas Rule of Evidence 103(d) (2021), this court may consider unobjected-to claims of error "affecting substantial rights, although they were not brought to the attention of the trial court." *Anderson v. State*, 353 Ark. 384, 395, 108 S.W.3d 592, 599 (2003). Williams claims that here, the nature of Corporal Earls's testimony was deeply and reversibly prejudicial and led to findings by the trial court that were not supported by the record. Accordingly, he maintains that any failure to make a specific objection regarding the Rule 403 balancing test is excusable.

Williams attempts to invoke the fourth *Wicks* exception in order to excuse his failure to make a Rule 403 objection to Corporal Earls's testimony before the trial court. This

fourth exception is based on Ark. R. Evid. 103(d), *see Wicks*, 270 Ark. at 787, 606 S.W.2d at 370, which provides that “[n]othing in this rule precludes taking notice of errors affecting substantial rights although they were not brought to the attention of the court.” As the supreme court recognized in *Wicks*, “[t]hat statement . . . is negative, not imposing an affirmative duty” on the trial court. *Id.* at 787, 606 S.W.2d at 370.

This court held in *Witherspoon v. State*, 2020 Ark. App. 468, at 2–3, that

Our case law is quite clear that *Wicks* presents only narrow exceptions that are to be rarely applied. *White v. State*, 2012 Ark. 221, at 8–9, 408 S.W.3d [720,] at 725. Both the Arkansas Supreme Court and the Arkansas Court of Appeals have held that these exceptions are not intended to apply where a party simply fails to make a contemporaneous objection. *Id.* at 9–10, 408 S.W.3d at 726. . . . Moreover, “[t]he *White* court . . . declined to apply the fourth *Wicks* exception—that the evidence affected the defendant’s substantial rights—to a situation where, like here, there was a simple failure to make a contemporaneous objection at trial.” [*Mahomes v. State*, 2013 Ark. App. 215, at 9, 427 S.W.3d 123, 129.]

Because Williams failed to raise his Rule 403 objection regarding the impact Corporal Earls’s testimony had on the trial court’s findings of fact below, and because the fourth *Wicks* exception does not apply to this type of evidentiary objection, we affirm.

Affirmed.

HARRISON, C.J., and ABRAMSON, J., agree.

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