

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-21-473

SIMON HARRIS, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 30, 2022

APPEAL FROM THE HEMPSTEAD
COUNTY CIRCUIT COURT
[NO. 29CR-03-170]

HONORABLE DUNCAN
CULPEPPER, JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant Simon Harris appeals the order of the Hempstead County Circuit Court denying his petition to terminate his obligation to register as a sex offender and to remove his name from the sex-offender registry. On appeal, he argues that the circuit court erred in construing the offenses with which he was found guilty as aggravated sex offenses, thus requiring him to remain on the registry. His argument is not preserved, and we affirm.

We review a circuit court's findings on a petition to terminate sex-offender registration under a clearly erroneous standard of review. *See Stow v. State*, 2016 Ark. App. 84, 482 S.W.3d 752. A finding is clearly erroneous when, although there is evidence to support it, we are left with the definite and firm conviction that a mistake was made. *Id.*

In 2004, Harris was found guilty by a Hempstead County jury of three counts of sexual assault in the first degree. He was fined \$15,000 for each count and required to register as a sex offender. On April 27, 2021, Harris filed a petition to terminate his obligation to

register as a sex offender and to remove his name from the sex-offender registry. A hearing was held on May 5, 2021. Harris's counsel stated that "we would stand on our Petition, Your Honor. I think that if it requires testimony it would just be his testimony under oath that everything alleged in the Petition is correct."

From the bench, the court ruled that

[i]n looking at the pleadings as well as the law and looking back at the Judgment and Commitment Form, in the Judgment and Commitment Form, it was specifically found that there was a specific finding made that Mr. Harris was an Aggravated Sexual Offender as defined by 12-12-903, and as an Aggravated Sexual Offender defined by that statute, 12-12-919 provides that lifetime registration is required if the offender is found to have committed an aggravated sexual offense. Even if the fifteen years applied, it is discretionary with the Court as to whether or not I should allow him to not register, and I am denying that request for both reasons, and he is still -- so the Petition to no longer register is denied.

An order to that effect was entered on May 14, 2021. On May 17, Harris filed a motion for new trial and reconsideration, arguing that the circuit court had erred in finding he had been convicted of an aggravated sexual offense. The motion was deemed denied on June 16.¹ Harris timely appealed. On appeal, he argues that the circuit court erred in finding he had been found guilty of a crime involving aggravated sex offenses and that lifetime registration was required.

Harris's argument that he has not committed a crime constituting an aggravated sex offense appeared for the first time in his motion for reconsideration; it was not made in his petition or argued during the hearing. In order to preserve an issue for appeal, the issue must

¹Because this is an appeal arising from a collateral procedure, it is civil in nature, and the Arkansas Rules of Appellate Procedure—Civil apply. *See, e.g., State v. Miller*, 2013 Ark. 329.

be presented to the circuit court at the earliest opportunity. *LaFont v. Mixon*, 2010 Ark. 450, at 15, 374 S.W.3d 668, 677.

Arkansas Code Annotated section 12-12-919(b)(1)(A)(i) (Supp. 2021) provides that fifteen years after being released from incarceration, a sex offender may apply for an order to terminate the obligation to register as a sex offender. The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that the applicant has not been adjudicated guilty of a sex offense for fifteen years and is not likely to pose a threat to the safety of others. Ark. Code Ann. § 12-12-919(b)(2). This process does not apply to sex offenders who are required to make lifetime registration under Arkansas Code Annotated section 12-12-919(a), including a sex offender who “[w]as found to have committed an aggravated sex offense.”

Harris was found to have committed a crime constituting an aggravated sex offense in 2004. The judgment and disposition order from his trial specifically has the box “yes” checked under the section stating, “Defendant has committed an aggravated sex offense, as defined in A.C.A. 12-12-903.” Despite this finding from 2004, Harris attempted to file a petition under section 12-12-919(b). Harris knew or should have known that the finding that he committed an aggravated sex offense would be an issue, and he should have addressed it in his petition or at trial. The motion for reconsideration was not the first available opportunity for Harris to address this issue.

Accordingly, Harris’s argument is not preserved. He was found to have committed an aggravated sex offense. Arkansas Code Annotated section 12-12-919(a) requires lifetime registration for a sex offender who was “found to have committed an aggravated sex

offense[.]” It was not clear error for the circuit court to deny the petition and find that Harris should remain on the registry. We affirm.

Affirmed.

ABRAMSON and VIRDEN, JJ., agree.

Willard Proctor, Jr., P.A., by: *Willard Proctor, Jr.*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Clayton P. Orr*, Ass’t Att’y Gen., for appellee.