

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-22-259

ZACHARY PINEGAR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 30, 2022

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT
[NO. 30CR-20-223]

HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

Appellant Zachary Pinegar appeals the circuit court's decision to expel him from the drug-court program and to sentence him to serve six years in prison. Pinegar's sole argument is that the circuit court committed reversible error because he was not first sent to drug treatment prior to being expelled.¹ We affirm.

In August 2021, Pinegar entered guilty pleas to possession of a controlled substance (methamphetamine) and possession of drug paraphernalia (a glass pipe), and he was given two concurrent six-year prison sentences. Those sentences were deferred, however, because Pinegar was permitted to enter the Seventh Judicial District Drug Court program, and if he

¹Pinegar's drug-court status was also terminated in a companion case that is under submission in appeal case No. CR-22-262. Pinegar's six-year sentence in this case is to be served consecutively to the twenty-year sentence that he received in case No. CR-22-262. The arguments made on appeal in case No. CR-22-262 are identical to the arguments made in this appeal.

successfully completed the drug-court program, his sentences would be expunged. The requirements of his drug-court program included that he attend and complete the twelve-step program, that he maintain total abstinence, that he undergo drug testing, that he maintain steady employment, and that he report as required by the drug-court personnel. The circuit court told Pinegar that the drug-court personnel would try to get him into treatment “as fast as we can.” In two separate orders entered in September 2021, Pinegar was ordered to complete in-house drug-rehabilitation treatment. On October 1, 2021, Pinegar received and signed the drug-court program handbook and conditions of supervision. If Pinegar violated the drug-court rules three or more times, he could be expelled from the program, and the previously deferred sentences would be imposed.

On December 10, 2021, the State petitioned for a hearing before the drug-court judge to address Pinegar’s multiple violations of the agreed terms. At the December 14, 2021 hearing, his attorney noted that because Pinegar had a possession-of-a-firearm charge, the court-ordered drug-treatment program would not accept him, but another treatment program had been found that would take him the next day. His attorney offered that Pinegar would accept “two strikes,” accept an ankle monitor, and would go to treatment in lieu of having the hearing conducted. The circuit court rejected that idea.

Evidence was presented that Pinegar committed more than three violations (a/k/a “strikes”) between November 2 and December 3, 2021.² Pinegar testified that he had not yet been to treatment, which he thought would help with his drug problems. A drug-court advisor testified that Pinegar had been provided counseling services, support services, and drug testing. The judge determined that the multiple “strikes” warranted the sanction of being expelled from the drug-court program and having the original six-year sentences imposed. This appeal followed.

Pinegar argues on appeal that “he was not allowed to go to drug treatment before being struck from the program” and that this meant that “his due process rights were violated.” This argument is not preserved for appellate review. There is no evidence that Pinegar raised this due-process argument at any time to the circuit court, and it may not be raised for the first time on appeal. See *Rhodes v. State*, 2011 Ark. 146; *Curtis v. State*, 2020 Ark. App. 353.

Affirmed.

GRUBER and BROWN, JJ., agree.

Gregory Crain, for appellant.

Leslie Rutledge, Att’y Gen., by: David L. Eanes, Jr., Ass’t Att’y Gen., for appellee.

²The violations included failure to report for drug testing, lack of truthfulness with staff, failure to maintain employment, failure to report that he had been terminated from work, multiple positive drug screens, and association with a known felon.