

Cite as 2023 Ark. App. 204
ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-22-472

ORLANDO DANIELS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 12, 2023

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. 18CR-21-660]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

Orlando Daniels appeals the Crittenden County Circuit Court’s denial of his request to instruct the jury on an alternative sentence of probation. We affirm.

On April 26, 2022, the State filed an amended criminal information alleging that in August 2021, Daniels committed felony possession of a firearm (Class B) pursuant to Ark. Code Ann. § 5-73-103(a)(c)(1)(A) (Repl. 2016) and that he is a habitual offender with four or more previous felony convictions.¹ A jury trial was held, and at the close of the State’s case, Daniels moved for a directed verdict, arguing that, although the State presented proof that he had more than four prior felony convictions and he possessed a firearm, his prior felonies were not violent. Daniels asserted that the statute requires that to be convicted of

¹One of Daniels’s prior felony convictions was for second-degree battery.

felon in possession of a firearm, the prior felonies must be violent in nature. The court denied the motion for a directed verdict, ruling that Ark. Code Ann. § 5-73-101(13) provides that second-degree battery² is a violent offense because of the elements of the use of physical force and the infliction of physical harm.³ The jury found Daniels guilty. Daniels was sentenced to seven years' incarceration in the Arkansas Department of Correction.

On appeal, Daniels argues that the circuit court erred in denying his request for an alternative jury instruction on probation. We disagree.

After the jury delivered the guilty verdict, Daniels requested that the court provide an alternative sentencing instruction pursuant to Ark. Code Ann. § 16-97-101(4) (Repl. 2016), which provides that the circuit court, "in its discretion, may also instruct the jury that counsel may argue as to alternative sentences for which the defendant may qualify." The court denied the request, stating that the denial was based on "the seriousness of the offense as a Class B felony. . . and his prior criminal record." Daniels asserts that the court responded without due consideration and did not exercise judicial discretion. Daniels argues that it was

²Ark. Code Ann. § 5-13-202 (Supp. 2021) provides that a person commits battery in the second degree if, with the purpose of causing physical injury to another person, the person causes serious physical injury to another person.

³"Violent felony conviction' means a conviction for any felony offense against the person which is codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-301 et seq., § 5-14-101 et seq., and § 5-14-201 et seq., or any other offense containing as an element of the offense one (1) of the following: (A) The use of physical force; (B) The use or threatened use of serious physical force; (C) The infliction of physical harm; or (D) The creation of a substantial risk of serious physical harm." Ark. Code Ann. § 5-73-101(13) (Supp. 2021).

“apparent that [the court] would not consider any alternative instructions that involved a Class B felony.” Daniels also contends that the Arkansas Sentencing Standards Grid: Offense Seriousness ranking table and related material shows that felon in possession of a firearm is “5 seriousness level,” *see* 154.00.05-001 Ark. Admin. Code, available at <http://170.94.37.152/REGS/154.00.05-001P-7453.pdf>, which means that it is objectively below the “line” demarcating serious crimes from the less serious. Daniels asserts that he could have received probation rather than incarceration; thus, he has demonstrated prejudice from the court’s arbitrary decision. Daniels’s argument is based on a misapprehension of the law.

The State correctly contends that Daniels did not qualify for alternative sentencing because he has four prior felony convictions. Sentencing in Arkansas is entirely a matter of statute, and no sentence shall be imposed other than as prescribed by statute. *Clark v. State*, 2019 Ark. App. 362, at 6, 584 S.W.3d 680, 684. A sentence is void or illegal when the circuit court lacks authority to impose it. *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909. Arkansas Code Annotated section 5-4-301(a)(2) (Supp. 2021) expressly states that the “court shall not . . . place a defendant on probation” if it is determined that the defendant has been previously convicted of two or more felonies in accordance with the habitual-offender statute. *See also Hewitt v. State*, 2020 Ark. App. 172, at 3, 598 S.W.3d 531, 533; *State v. Joslin*, 364 Ark. 545, 548, 222 S.W.3d 168, 170 (2006) (in both cases, reversing and remanding for resentencing when habitual-offender appellants were sentenced to probation). We affirm.

Affirmed.

GRUBER and BROWN, JJ., agree.

Bart Ziegenhorn, for appellant.

Leslie Rutledge, Att’y Gen., by: *Kent G. Holt*, Ass’t Att’y Gen., for appellee.