

Gary Lee McDONALD *v.* STATE of Arkansas

CR 84-103

680 S.W.2d 703

Supreme Court of Arkansas  
Opinion delivered December 10, 1984

APPEAL & ERROR — FAILURE TO RAISE ISSUE BELOW — EFFECT ON APPEAL. — Having failed to raise an issue below, the point is waived and cannot be considered for the first time on appeal.

Appeal from Pulaski Circuit Court, Fourth Division;  
*John Langston*, Judge; affirmed.

*William R. Simpson*, Public Defender, and *Howard W. Koopman*, Chief Deputy, by: *Deborah R. Sallings*, Deputy Public Defender.

*Steve Clark*, Att'y Gen., by: *Patricia G. Cherry*, Asst. Att'y Gen., for appellee.

ROBERT H. DUDLEY, Justice. In a trial to the court, the appellant was found guilty of aggravated robbery and theft of property. Next, the court found that appellant previously had been convicted of more than one, but less than four, felonies and imposed enhanced sentences of forty and five years. *See Ark. Stat. Ann. § 41-1001 (Repl. 1977 and Supp. 1983)*. Appellant contends that the trial court committed error in considering, for enhancement purposes, a prior conviction in which the state did not prove that appellant had been represented by counsel.

At trial, the court asked appellant's counsel, "Is there any contention that he wasn't represented by counsel at any of these convictions?" Counsel replied, "No, Your Honor. I think the only contention that we would have is that some of these are awfully old." Having failed to raise the issue below, the point is waived, and cannot be considered for the first time on appeal. *Hefley v. State*, 281 Ark. 324, 663 S.W.2d 732 (1984).