

SUPREME COURT OF ARKANSAS

No. CR12-623

RALPH PRUITT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 28, 2013APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT
[NO. CR-11-50]

HON. WILLIAM M. PEARSON, JUDGE

AFFIRMED.**KAREN R. BAKER, Associate Justice**

On January 25, 2011, Ralph Pruitt was convicted of two counts of rape under Arkansas Code Annotated section 5-14-103(a)(3) (Supp. 2011), class Y felonies, and one count of sexual indecency with a minor under Arkansas Code Annotated section 5-14-110(4)(C) (Supp. 2011), a class D felony. Pruitt was sentenced to 480 months on each of the rape charges and 72 months on the sexual-indecency-with-a-minor charge, each sentence to run concurrently. On appeal, Pruitt asserts that the circuit court erred in denying his motion to sever charges. We affirm.

Because Pruitt does not challenge the sufficiency of the evidence, only a brief recitation of the facts is necessary. *Stewart v. State*, 2012 Ark. 444. Pruitt's convictions and sentences arise from Pruitt raping two of his granddaughters and committing sexual indecencies on a third granddaughter. At trial, two of his granddaughters testified that Pruitt raped each of them between the years of 2000 and 2008. The third granddaughter testified that Pruitt

exposed his penis to her and touched her inappropriately between the years of 2005 and 2009.

Pruitt was tried for each of the offenses committed against his granddaughters in the same trial. However, on December 19, 2011, Pruitt filed a pretrial motion to sever the offenses into separate trials, arguing that the acts alleged were not part of a single scheme or plan. On January 5, 2012, the circuit court held a hearing on the motion. The State argued that joinder of the offenses was appropriate because the testimony of all three victims would be admissible in each trial in order to show intent, motive, or common scheme or plan, citing *Parrish v. State*, 357 Ark. 260, 163 S.W.3d 843 (2004). The circuit court found that *Parrish* controlled and denied Pruitt's motion.

For his sole point on appeal, Pruitt asserts that the circuit court erred in denying his motion to sever the offenses. Arkansas Rule of Criminal Procedure 22.2(a) (2011) states: "Whenever two (2) or more offenses have been joined for trial solely on the ground that they are of the same or similar character and they are not part of a single scheme or plan, the defendant shall have a right to a severance of the offenses." Pruitt contends that there was no testimony offered to show that the offenses were part of a single scheme or plan in regard to the victims. Pruitt further argues that *Parrish* should be overruled because the evidence brought in under the severed cases would be subject to a limiting instruction not required in the joined cases.

We do not reach Pruitt's argument. Arkansas Rule of Criminal Procedure 22.1(b) (2011) states: "If a defendant's pretrial motion for severance was overruled, he may renew the motion on the same grounds before or at the close of all the evidence. Severance is waived

by failure to renew the motion.” The record demonstrates that Pruitt failed to renew his motion to sever. Therefore, he waived his right to severance. *Brown v. State*, 315 Ark. 466, 869 S.W.2d 9 (1994). Having waived severance at trial, Pruitt cannot now challenge the denial of his pretrial motion to sever. *Id.*

Affirmed.

James Law Firm, by: *Marjorie E. Rogers*, for appellant.

Dustin McDaniel, Att’y Gen., by: *Pamela A. Rumpz*, Ass’t Att’y Gen., for appellee.