

Cite as 2010 Ark. 62

SUPREME COURT OF ARKANSAS

No. CR 09-32

BONDIE HOOD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered FEBRUARY 12, 2010

APPEAL FROM THE GREENE
COUNTY CIRCUIT COURT
[NO. CR 2007-607]

HON. BARBARA HALSEY, JUDGE

CERTIFIED QUESTION ANSWERED;
REMANDED TO COURT OF
APPEALS.

DONALD L. CORBIN, Associate Justice

Appellant Bondie Hood entered a negotiated and unconditional plea of guilty to one count of rape on September 15, 2008, in Greene County Circuit Court. The circuit court accepted the guilty plea, held a sentencing hearing without a jury on September 18, 2008, and ultimately sentenced Hood to 240 months' imprisonment. Hood filed a timely notice of appeal and was appointed new counsel on appeal, who has filed a motion to withdraw and a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k)(1) (2009). Hood has filed his pro se points pursuant to Rule 4-3(k)(2). The State contends that this appeal should be dismissed for lack of jurisdiction because it does not meet any of the exceptions to the general rule that appeals from guilty pleas are not allowed. The Arkansas Court of Appeals certified this case to this court, along with a companion case also handed down today, *Johnson v. State*, 2010 Ark. 63, pursuant to Ark. Sup. Ct. R. 1-2(b)(5)



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(2009), as presenting a significant issue needing clarification of the law, specifically: whether an appellant who has entered a guilty plea may appeal alleging evidentiary errors in a sentencing hearing where the appellant was sentenced by the court rather than by a jury. Here, we address the State's argument as it relates specifically to the question certified by the court of appeals, and we remand to the court of appeals for a determination on the merits.

As we have pointed out today in *Johnson*, 2010 Ark. 63, this court has previously permitted an appeal alleging errors in the admissibility of testimony or evidence during the sentencing phase of a bifurcated proceeding following a guilty plea. *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003). Even prior to *Bradford*, however, this court discussed the statutory procedure for bifurcated proceedings in which an appellant pleads guilty and is sentenced by the court. *Marshall v. State*, 342 Ark. 172, 27 S.W.3d 392 (2000) (discussing Ark. Code Ann. §§ 16-97-102 to -103 (Supp. 1999)).

Given that the statutory procedure for bifurcated proceedings allows for entry of a guilty plea to be followed by sentencing either by the court, pursuant to section 16-97-102, or by a jury with agreement of the prosecution and consent of the court, pursuant to Ark. Code Ann. § 16-97-101(6) (Repl. 2006), this court's reasoning in *Hill v. State*, 318 Ark. 408, 887 S.W.2d 275 (1994), for allowing nonjurisdictional appeals of evidentiary issues raised in the sentencing phase following a guilty plea applies to both situations regardless of whether the appellant is sentenced by a jury or by a court. This is so because, regardless of whether an appellant who has pleaded guilty is sentenced by a court or by a jury, the sentencing phase



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is still a bifurcated proceeding separate and apart from the review and acceptance of the plea itself.

Accordingly, and for the reasons set forth in *Johnson*, 2010 Ark. 63, we hold that the exception allowing appeals from guilty pleas alleging errors in the admissibility of testimony or evidence during the sentencing phase following acceptance of the guilty plea is not limited to cases where the appellant is sentenced by the jury but applies also to cases where the appellant is sentenced by the court.

Certified question answered; remanded to court of appeals.

Robert M. "Robby" Golden, for appellant.

Dustin McDaniel, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.