Cite as 2009 Ark. App. 728

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-94

	Opinion Delivered NOVEMBER 4, 2009
QUITEN L. YOUNG APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. CR 2008-383]
V.	HONORABLE MARION A. HUMPHREY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, Quiten L. Young, is appealing from his convictions following a bench trial in the Pulaski County Circuit Court on charges of possession of a controlled substance with intent to deliver and simultaneous possession of drugs and firearms. On appeal, appellant argues that he was illegally convicted of both offenses when one is a lesser-included offense of the other. Because the issue was not properly preserved for our review, we affirm.

On June 13, 2008, the State filed a felony information against appellant, alleging that he committed the offenses of possession of cocaine, marijuana, and PCP with intent to deliver, as well as felon in possession of a firearm and simultaneous possession of drugs and firearms. The trial court found appellant guilty on all three possession charges and on simultaneous possession of drugs and firearms. The trial court merged the felon-in-possession-of-a-firearm charge into the simultaneous-possession-of-drugs-and-firearms charge.

Appellant received four consecutive fifteen-year sentences in the Arkansas Department of Correction. This appeal followed.

The State argues in its brief that the issue raised by appellant was not properly preserved for our review. We agree. Appellant admits that he did not raise the issue before the trial court. Appellant argues in his brief that his appeal is based on the imposition of an illegal sentence by the trial court and is thus eligible for review on direct appeal despite the fact that it was not raised below. It is generally true that allegations of void or illegal sentences are treated like questions of subject-matter jurisdiction, which can be raised for the first time on appeal. *See Rameriz v. State*, 91 Ark. App. 271, 209 S.W.3d 457 (2005). However, an examination of appellant's argument shows that, while it is couched in terms of a void or illegal sentence, in substance it is an argument that appellant's convictions run afoul of the prohibition against double jeopardy. When the argument of double jeopardy is not raised below, we cannot consider that argument on direct appeal. *State v. Montague*, 341 Ark. 144, 147, 14 S.W.3d 867, 869 (2000).

In *Montague v. State*, 68 Ark. App. 145, 5 S.W.3d 101 (1999), the defendant argued, as appellant does here, that his sentencing on an offense and an alleged lesser-included offense of the first offense was illegal. This court held that the defendant in that case was raising an illegal-sentence argument that could be considered on direct appeal despite not being raised below. The supreme court reversed, stating that:

> Treating the sentence as void or illegal on double jeopardy grounds fails to consider a series of our cases in which we have declined to address on direct

> appeal an appellant's arguments that a conviction violated double jeopardy where no objection was made to the trial court to set aside the conviction nor any argument made raising the issue of double jeopardy.

State v. Montague, 341 Ark. at 146, 14 S.W.3d at 868 (citing *Marshall v. State*, 316 Ark. 753, 875 S.W.2d 814 (1994)*; Leavy v. State*, 314 Ark. 231, 862 S.W.2d 832 (1993)*; Foster v. State*, 275 Ark. 427, 631 S.W.2d 7 (1982)). In support of his contention that he should be able to raise his argument for the first time on direct appeal, appellant cites to the supreme court's decision in *Flowers v. Norris*, 347 Ark. 760, 68 S.W.3d 289 (2002). In *Flowers*, the court reached the merits of a claim of illegal sentence similar to that advanced by appellant that was raised for the first time in a petition for a writ of habeas corpus. However, *Flowers* did not expressly overrule *Montague*, which is a clearer precedent for the instant case.[1] We hold that, based upon the supreme court's decision in *Montague*, appellant's argument is not properly one of an illegal sentence and cannot be considered on direct appeal because it was not raised below. Therefore, the judgment of the trial court is affirmed.

Affirmed.

ROBBINS and HENRY, JJ., agree.

[1]We attempted, without success, to certify this appeal to the Supreme Court.