NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 09-78

	Opinion Delivered JUNE 3, 2009
CALVIN W. CLARK APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT,
V.	[NO. CR-2006-616]
	HONORABLE LEE FERGUS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Calvin Clark was placed on probation for five years beginning in August 2006 for committing the crime of sexual assault. The State filed a petition to revoke in July 2008, alleging three bases to revoke. After a hearing in October 2008, the trial court found by a preponderance of the evidence that appellant had violated the terms of his probation. Appellant appeals the revocation entered by the Craighead County Circuit Court, asserting that the trial court erred in denying him his constitutional right to testify in his own defense. We hold that the trial court did not deny him that right. Thus, we affirm.

A defendant in a criminal case has the right to testify in his own behalf under the First, Sixth, and Fourteenth Amendments of the United States Constitution. *Rock v. Arkansas*, 483 U.S. 44 (1987). The right to present testimony is not without limitation and may, in appropriate cases, bow to accommodate other legislative interests in the criminal trial process; however, restrictions on the defendant's right to testify may not be arbitrary or

disproportionate to the purposes they are designed to serve. *Id.*; *see also Whitfield v. Bowersox*, 324 F.3d 1009 (8th Cir. 2003) (holding that the defendant's right to testify is circumscribed by procedural and evidentiary rules when the rules are neither arbitrary nor disproportionate to the right). *See also Henson v. State*, 94 Ark. App. 163, 227 S.W.3d 450 (2006). The standard of review is abuse of discretion. *See Henson*, *supra.*

In this revocation proceeding, appellant was one of three witnesses. The other two were his probation officer and a detective, who testified about the terms of probation and appellant's lack of compliance. Appellant testified at length about his predicament, at first giving a narrative lasting ten pages of the transcript. At this point, the prosecutor noted that he wanted appellant "to have a chance to say what he needs to say, but we're getting way beyond. . . ." The judge agreed, stating as follows:

> Not only that, but he's repeating himself now. Mr. Clark, do you have anything else you want to say? You've already told us what happened when you were in jail before. Is there anything else you want to tell me?

Appellant said no, but continued talking. The judge responded:

> All right. You've already said that, too. If you want to tell me something you haven't told me before, you had told me that already.

Appellant replied, "No, sir, I don't have anything else necessarily." The judge asked defense counsel if he wanted to ask anything else of appellant, and defense counsel said no. The prosecutor continued questioning for another five pages of transcript before concluding his examination. Defense counsel asked no more questions. Thereupon, the trial judge rendered a finding that appellant's probation would be revoked.

Appellant was not deprived of his right to testify. Indeed, he testified at length. It was only at the point that appellant's testimony became repetitive that his testimony was halted, to which no objection was lodged.

Although appellant acknowledges that he failed to object at the trial-court level, he contends that the halting of his testimony is plain error of constitutional proportion that requires no objection to be preserved for review. We disagree.

We do not recognize plain error. Issues raised for the first time on appeal, even constitutional ones, will not be considered because the trial court never had the opportunity to rule on them. *London v. State*, 354 Ark. 313, 320, 125 S.W.3d 813, 817 (2003). The only conceivable exceptions are those found in the *Wicks* exceptions, which do not apply to this appeal. *See Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980). *See also Springs v. State*, 368 Ark. 256, 244 S.W.3d 683 (2006); *Anderson v. State*, 353 Ark. 384, 108 S.W.3d 592 (2003).

Even had appellant lodged a proper objection, there was no error. Appellant was given ample opportunity to testify, and his attorney was given ample opportunity to posit additional questions to his client. We discern no error, much less prejudice.

Affirmed.

HART and BAKER, JJ., agree.