

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-32

BONDIE HOOD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 7, 2010

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

HONORABLE BARBARA HALSEY,
JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

COURTNEY HUDSON HENRY, Judge

The prosecuting attorney in Greene County charged appellant Bondie Hood with the offense of rape in violation of Arkansas Code Annotated section 5-14-103(a)(4)(A)(ii) (Supp. 2009). This statute provides that a person commits rape if he engages in sexual intercourse with another person who is a minor and the actor is the victim's uncle. Rape is a class Y felony that is punishable by ten to forty years in prison, or life. Ark. Code Ann. § 5-4-401(a)(1) (Repl. 2006). Appellant subsequently pled guilty to raping his fifteen-year-old niece who gave birth to appellant's child, and the trial court conducted a hearing to determine appellant's sentence. After listening to the testimony of witnesses offered by the prosecution and the defense, the trial court sentenced appellant to a term of twenty years in prison. This

appeal follows the trial court's entry of the judgment and commitment order setting forth the plea and sentence.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that the appeal is wholly without merit. Counsel's motion is accompanied by a brief listing all objections raised by the parties with an explanation as to why none of the court's rulings were adverse to appellant and thus present no meritorious basis for reversal. The clerk of this court provided appellant with a copy of counsel's motion and brief and notified him of the right to file a list of pro se points on appeal. Appellant has filed a list of points for us to review.

The State responded to appellant's list of points and also asserted that the appeal must be dismissed for the lack of jurisdiction. Specifically, the State argued that no appeal could lie following a plea of guilt where the sentencing hearing took place before the trial court as opposed to a jury. We certified this jurisdictional question to the supreme court, and the court held that the exception for allowing appeals from guilty pleas to question evidentiary rulings made during a sentencing hearing applies to cases where an appellant is sentenced either by a judge or jury. *Hood v. State*, 2010 Ark. 62. The supreme court remanded the case to us to review the appeal.

Our review of the record confirms that the trial court made no rulings at the sentencing hearing that were adverse to appellant. The trial court sustained three objections

raised by appellant and did not rule upon another, and the trial court overruled the State's lone objection.

In his pro se points on appeal, appellant maintains that forcible compulsion should have been an issue. However, forcible compulsion is not an element of the offense of rape with which he was charged. *See* Ark. Code Ann. § 5-14-103(a)(4)(A)(ii). Moreover, by pleading guilty, appellant waived any argument on appeal with regard to the underlying offense. *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004); *Casey v. State*, 97 Ark. App. 1, 242 S.W.3d 627 (2006). For the same reason, appellant waived his argument that the victim was his niece by marriage and that he was not her guardian.

Appellant also asserts that his sentence was excessive. Appellant's sentence is within the range of permissible sentences, and thus it is not excessive. *See* Ark. Code Ann. § 5-4-401(a)(1). More importantly, appellant did not raise this objection at the hearing. A defendant who makes no objection at the time the trial court imposes the sentence has no standing to complain of it. *Brown v. State*, 374 Ark. 324, 287 S.W.3d 587 (2008).

Appellant also maintains that the child was a willing participant and that the act was consensual. The victim's consent is no defense to a prosecution for rape under the subsection of the rape statute outlining the offense. Ark. Code Ann. § 5-14-103(b). However, the trial court allowed testimony on this subject as mitigating evidence under Arkansas Code Annotated section 16-97-103(6) (Repl. 2006). As the trial court permitted the introduction of testimony, the trial court considered it in deciding upon appellant's sentence. Appellant's

Cite as 2010 Ark. App. 299

argument thus provides no basis for reversal. Finally, appellant contends that his trial counsel was ineffective. However, we do not address claims of ineffective assistance of counsel for the first time on appeal. *Williams v. State*, 2009 Ark. App. 525, ___ S.W.3d ___.

Based upon our review of the record, we conclude that the appeal is wholly frivolous. Accordingly, we grant counsel's motion to be relieved and affirm the judgment and sentence imposed by the trial court.

Affirmed; motion granted.

HART and ROBBINS, JJ., agree.