

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SAM BIRD, JUDGE

DIVISION IV

CACR06-1337

SEPTEMBER 12, 2007

JOSEPH POLIVKA

APPELLANT

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. CR2004-699I]

V.

HON. JOHN H. WRIGHT, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

In accordance with his guilty plea, Joseph Polivka was sentenced by a jury on two counts of criminal attempt to commit first-degree murder, two counts of felony firearm enhancement, and possession of a firearm by a convicted felon. The charges against him arose from the shootings of his wife and stepson on September 28, 2004. He received sentences of thirty years for each attempted murder, fifteen years for each firearm enhancement, and five years for the possession of a firearm. On appeal he contends that his fifteen-year sentences for the felony-firearm convictions are excessive. He argues that his sentences are “more than he will serve under his original sentence for the underlying crime” and that they effectively result in a life sentence. He also argues that the meritorious good time allowed by Ark. Code Ann.

§ 16-90-121 should be applied to § 16-90-120, under which he was sentenced. We reject these arguments and affirm the sentences.

An individual must object to a sentence at the trial level, and this court does not consider such an argument raised for the first time on appeal. *Fisher v. State*, 84 Ark. App. 318, 139 S.W.3d 815 (2004). Further, a party is bound by the scope and nature of the objections and arguments made at trial. *E.g., Tillman v. State*, 364 Ark. 143, 217 S.W.3d 773 (2005). Prior to jury voir dire at the sentencing hearing, Polivka's counsel discussed with the judge whether or not meritorious good-time credit could be applied to reduce whatever sentence Polivka should receive on the firearm-enhancement counts. Ultimately, however, he did not object to his sentences on the grounds that they were "excessive" or on any other grounds. Because he did not object to the sentences at the proceedings below, he is barred from appealing them now.

Moreover, Polivka's sentences are not excessive. Use of a firearm as a means of committing a felony may, in the discretion of the sentencing court, subject the person convicted of the felony to an additional period of confinement in the state penitentiary for a period not to exceed fifteen years, to run consecutively and not concurrently with any period of confinement imposed for conviction of the felony itself. Ark. Code Ann. § 16-90-120(a) and (b) (Repl. 2006). The two fifteen-year sentences that Polivka received for felony-firearm enhancements are not excessive, as they are expressly permitted by statute. *See also Thompson v. State*, 280 Ark. 265, 658 S.W.2d 350 (1983) (holding that the trial court's decision to run sentences

consecutively, rather than concurrently, was not cruel and unusual even though appellant believed that he had effectively received a life sentence for a crime not subject to such punishment).

We acknowledge the provision of Ark. Code Ann. § 16-90-121 that a person who pleads guilty “to a second or subsequent felony involving the use of a firearm shall be sentenced to a minimum term of imprisonment of ten (10) years in the state prison without eligibility of parole or community punishment transfer but subject to reduction by meritorious good-time credit.” However, we agree with the State that the legislature alone can address a claim that meritorious good time allowed by this section should also be applied to section 16-90-120, under which Polivka was sentenced. *E.g., Scisson v. State*, 367 Ark. 368, 370, \_\_ S.W.3d \_\_, \_\_ (2006) (reciting that sentencing is entirely a matter of statute in Arkansas). We also note that, even when two statutes are applicable and one prescribes a more severe penalty than the other, there is no constitutional bar to bringing charges under the statute that prescribes the more severe penalty. *See Hagar v. State*, 341 Ark. 633, 19 S.W.3d 16 (2000)(noting that a court is not prevented from using the more stringent provision of two punishment statutes). Thus, Polivka’s argument that meritorious good time should be applied to the sentences that he received is not grounds for reversal.

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.