

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-333

November 28, 2007

JERRY DOUGLAS BARNETT
APPELLANT

AN APPEAL FROM UNION
COUNTY CIRCUIT COURT
[CR2005-452-1]

V.

HON. HAMILTON H. SINGLETON,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

On August 15, 2006, a Union County jury found Jerry Douglas Barnett guilty of various crimes, for which he was sentenced to a total of twenty years imprisonment in the Arkansas Department of Correction. Appellant does not challenge the convictions. Rather, he asserts that the trial court erred in allowing the State to present evidence of a 1992 guilty plea and probation sentence in light of evidence that the court dismissed him from probation five years later. He acknowledges the decision in *McClish v. State*, 331 Ark. 295, 962 S.W.2d 332 (1998), which allows the State to present evidence of an expunged conviction, but he urges us to reconsider that case. We are without the power to overrule supreme court precedent; therefore, we affirm.

Appellant was convicted of four felonies: residential burglary, Ark. Code Ann. § 5-39-201(a) (Repl. 2006); theft of property over \$500, Ark. Code Ann. § 5-36-103(b)(2) (Repl. 2006); possession of methamphetamine, Ark. Code Ann. § 5-64-401(c)(2)(A) (Repl. 2005); and possession of drug paraphernalia, Ark. Code Ann. § 5-64-403(c) (Repl. 2005). The State

alleged habitual-offender status under Ark. Code Ann. § 5-4-501(a) (Repl. 2006), which enhances penalties for persons previously convicted of more than one but fewer than four felonies.

To prove appellant's habitual-offender status, the State introduced a certified copy of a guilty plea to conspiracy to delivery of a controlled substance (LSD), dated March 9, 1992, for which appellant received a five-year term of probation.¹ Appellant objected to the entry of the guilty plea and proffered an April 28, 1997, order, which terminated his probation, discharged and dismissed the charges against him, and allowed him to seek to have his criminal record sealed. The court allowed the State to introduce the 1992 guilty plea over appellant's objection. The jury later recommended sentences of five years for the residential burglary and five years for the theft of property. As the jury was unable to affix sentences on the drug charges, the court sentenced appellant to ten years on the charge of possession of methamphetamine and five years on the charge of possession of drug paraphernalia. The court ordered the sentences for residential burglary and theft to be run concurrently; otherwise, the sentences were consecutive, for a total of twenty years in the Arkansas Department of Correction.

Appellant's sole contention on appeal involves the admissibility of the 1992 guilty plea. Appellant acknowledges that Arkansas law permits expunged convictions to be used to enhance a defendant's sentence as a habitual offender. *See McClish, supra*. He urges this court to reconsider *McClish* in light of Ark. Code Ann. § 5-4-311 (Repl. 2006), which orders a trial court to discharge a defendant and dismiss any charges against him upon his successful completion of his probationary period. Even if we were to agree with appellant, we are without power to overturn a decision by the Arkansas Supreme Court. *Box v. State*, 348 Ark.

¹The State also introduced, without objection, a judgment and commitment order dated October 26, 2005, reflecting a probation revocation on a separate drug charge.

116, 71 S.W.3d 552 (2002); *Austin v. State*, 98 Ark. App. 380, ___ S.W.3d ____ (2007).

Therefore, we affirm.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.