ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CACR 07-978

BRYAN R. NORWOOD
APPELLANT

April 16, 2008

APPEAL FROM THE CIRCUIT COURT OF GARLAND COUNTY
[NO. CR-05-561-4]

V.

STATE OF ARKANSAS
APPELLEE

HONORABLE MARCIA RENAUD HEARNSBERGER, JUDGE

AFFIRMED

In September 2005, appellant Bryan R. Norwood was charged in the Garland County Circuit Court with first-degree murder in the death of Joseph Peters and felony fleeing. The State also alleged that appellant was subject to an enhanced sentence under Ark. Code Ann. § 16-90-120 (Supp. 2007) for committing the murder with a firearm. At trial, appellant admitted that he shot Peters but claimed that he acted in self defense. The jury found appellant guilty of second-degree murder and felony fleeing. The jury also found that appellant had employed a firearm when committing the murder. The jury fixed appellant's sentences at thirty years in prison for second-degree murder, six years for fleeing, and fifteen years for the firearm enhancement. The trial court ordered the sentences for second-degree murder and fleeing to be served concurrently and the firearm enhancement to be served consecutively to those sentences, for a total of forty-five years' imprisonment.

Appellant raises two issues on appeal which focus on the firearm-enhancement penalty that was imposed. Appellant contends that he received an illegal sentence because sentencing under the firearm-enhancement statute is prohibited by Ark. Code Ann. § 5-4-104 (Repl. 2006). He also argues that sentencing under the firearm-enhancement statute violates the Double Jeopardy Clause. We affirm the judgment and disposition order.

Arkansas Code Annotated section 16-90-120, entitled "Felony with a firearm," provides in subsection (a) that any person convicted of a felony offense who employed a firearm of any character as a means of committing or escaping from the felony, in the discretion of the court, may be subjected to an additional period of confinement in the state penitentiary for a period not to exceed fifteen years. Arkansas Code Annotated section 5-4-104, which outlines the authorized sentences under our criminal code, states in subsection (a) that "[n]o defendant convicted of an offense shall be sentenced otherwise than in accordance with this chapter."

Appellant's first argument is that sentencing under the firearm-enhancement statute is prohibited by the plain language of § 5-4-104(a) and thus is not an authorized sentence under our criminal code. Appellant further contends that § 5-4-104(a) superseded the firearm-enhancement statute because it was passed into law after the firearm-enhancement statute. Both of these arguments were rejected by the supreme court over two years ago in *Williams v. State,* 364 Ark. 203, 217 S.W.3d 817 (2005). In that case, the supreme court held that the two statutes were not in conflict because § 5-4-104(a) can be viewed as referring only to the initial sentence imposed upon conviction for a crime, whereas § 16-90-120(a) can be read as referring only to a sentence enhancement that may be added to the initial sentence. The court also observed that when § 5-4-104 was enacted the legislature did not choose to repeal or overrule § 16-90-120, and the court presumed that when the general assembly passed the later act, it was well aware of the prior act. *Williams* disposes of

appellant's arguments, and we affirm on this point.

Appellant next argues that sentencing under the firearm-enhancement statute violates double jeopardy because it imposes cumulative punishments for the same conduct without specific authorization by the legislature, as contrary to the decision in *Missouri v. Hunter,* 459 U.S. 359 (1983). This argument was not made before or at trial, but appellant asserts that it was raised in a motion for a new trial. Appellant filed three new-trial motions, and our reading of them does not reveal that this precise argument was made in any of them. Even if it had been, such an objection made for the first time in a motion for a new trial is untimely. *Donovan v. State,* 95 Ark. App. 378, 237 S.W.3d 484 (2006). And, double jeopardy is not an issue that can be raised for the first time on direct appeal. *State v. Montague,* 341 Ark. 144, 14 S.W.3d 867 (2000). Appellant's lack of preservation preludes us from addressing this argument.

Affirmed.

HART and VAUGHT, JJ., agree.