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

DIVISION III

CACR06-898

May 23, 2007

ERIC LAVEL MURRAY
APPELLANT

AN APPEAL FROM CRITTENDEN COUNTY CIRCUIT COURT [CR2005-348]

V.

HON. GERALD PEARSON, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

On September 12, 2005, a Crittenden County jury found Eric Murray guilty of felon in possession of a firearm, a Class B felony, and sentenced him as a habitual offender to a twenty-year term in the Arkansas Department of Correction. He appeals from his sentence, contending that the trial court erroneously found that he had been convicted of four or more prior felonies, which resulted in an incorrect jury instruction regarding the range upon which it could sentence him to imprisonment. Because appellant can show no prejudice from any alleged error, we affirm.

During the sentencing phase of appellant's trial, the State presented four judgment and commitment orders as proof of appellant's habitual-offender status. The first order (State's exhibit 15) shows that in case CR-88-246, appellant was convicted of one count of theft. The second order (State's exhibit 16) shows that in cases CR-88-234C and CR-88-246, appellant was convicted of one count of burglary and two counts of theft. The other two orders (State's exhibits 17 and 18) are from two other cases, resulting in convictions of first-degree battery

and second-degree murder. Appellant was sentenced on each of these convictions on January 28, 1991.

The State alleged that appellant had been convicted of six felonies, making the applicable range of punishment from five years to forty years, pursuant to Ark. Code Ann. § 5-4-501(b)(2) (Repl. 2006). Appellant objected, contending that he had only been convicted of three felonies, as defined by the habitual-offender statute, and that the applicable range of punishment was from five years to thirty years, pursuant to Ark. Code Ann. § 5-4-501(a)(2). In making his argument, appellant relied upon § 5-4-501(e)(1), which provides:

> For the purpose of determining whether a defendant has previously been convicted or found guilty of two (2) or more felonies, a conviction or finding of guilt of burglary, § 5-39-201, and of the felony that was the object of the burglary was considered a single felony conviction or finding of guilt.

The court rejected appellant's argument and instructed the jury that appellant had been convicted of six felonies. It informed the jury that the applicable sentencing range was a term of not less than five nor more than forty years. The jury returned with a twenty-year term of incarceration.

For his sole point on appeal, appellant makes the same argument that he made at trial: that the trial court erroneously found that he had been convicted of six felonies, leading to an erroneous instruction on the potential range of sentence. However, as argued by the State, appellant cannot show prejudice. If one were to accept appellant's argument, then he could have been sentenced to a maximum thirty-year term of imprisonment. He was sentenced to twenty years. A defendant who has received a sentence within the statutory range short of the maximum sentence cannot show prejudice from the sentence itself. *Buckley v. State*, 349 Ark. 53, 76 S.W.3d 825 (2002). This court does not reverse absent a showing of prejudice. *Robinson v. State*, 317 Ark. 407, 878 S.W.2d 405 (1994).

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.