

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-528

CRYSTAL BARNETT

APELLANT

V.

STATE OF ARKANSAS

APELLEE

Opinion Delivered January 14, 2009

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT,
[NO. CR-2005-198-3]

HONORABLE R. BYNUM GIBSON,
JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

ROBERT J. GLADWIN, Judge

The appellant, Crystal Barnett, appeals the revocation of her probation as entered by the Drew County Circuit Court for which she was sentenced to seven years' incarceration in the Arkansas Department of Correction stemming from a guilty plea on a charge of possession of methamphetamine. The revocation was based on the circuit court's determination that appellant had violated the terms of her probation by committing a crime; declining to remain gainfully employed; testing positive for drugs; refusing to submit to drug and alcohol testing; failing to pay probation fees; and leaving the State of Arkansas without a travel pass.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. This motion was accompanied by a

brief discussing all matters in the record that might arguably support an appeal, including all adverse rulings and a statement as to why counsel considers each point raised as being incapable of supporting a meritorious appeal. Appellant was provided a copy of her counsel's brief and was notified of her right to file a list of points on appeal within thirty days. She filed no points. As a consequence, the State Attorney General declined to file a brief.

As this is a no-merit appeal, counsel is required to list each ruling adverse to the defendant and to explain why each adverse ruling does not present a meritorious ground for reversal. *See Anders, supra*; Ark. Sup.Ct. R. 4-3(j)(1); *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The test is not whether counsel thinks the circuit court committed no reversible error, but whether the points to be raised on appeal would be wholly frivolous. *See Anders, supra*; *Eads, supra*. Pursuant to *Anders*, we are required to make a determination of whether the case is wholly frivolous after a full examination of all the proceedings. *See Anders, supra*; *Eads, supra*.

Counsel first discusses whether the circuit court was correct in not accepting appellant's guilty plea at the revocation. Subsequent to counsel explaining the recommended plea offer to the circuit court, appellant was asked by the circuit judge to confirm that she had tested positive for benzodiazepine. Appellant responded that she had a prescription for them, basically expressing her lack of guilt as to that allegation, at which time the circuit judge refused to accept the guilty plea and had the parties proceed with the full revocation hearing.

Rule 24.6 of the Arkansas Rules of Criminal Procedure states that "the Court shall not enter a judgment upon a plea of guilty or nolo contendere without making such inquiry as will

establish that there is a factual basis for the plea.” The rule is mandatory. *Pardue v. State*, 363 Ark. 567, 215 S.W.3d 650 (2005). Because appellant expressed a lack of guilt as to the allegations against her, it was proper for the circuit court to proceed with the revocation hearing rather than to accept the negotiated plea. The ruling was not adverse to appellant’s interests, and, in fact, safeguarded the proper procedural process.

It appears that the only other adverse ruling is the circuit court’s denial of appellant’s motion for a directed verdict and the renewal thereof. A circuit court may revoke a defendant’s probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of her probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). The State need only show that the appellant committed one violation to sustain a revocation. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We give great deference to the trial court in determining the preponderance of the evidence, and we do not reverse the revocation unless the decision is clearly against the preponderance of the evidence. *Williams, supra*; *Richardson, supra*. Where testimony is conflicting, this court defers to the trial court’s determinations with regard to the credibility of witnesses. See *Newborn v. State*, 91 Ark. App. 318, 210 S.W.3d 153 (2005).

The State presented testimony from appellant’s probation officer as to various alleged violations, and appellant herself acknowledged that she had not remained gainfully employed; committed the misdemeanor offense of shoplifting; left the State of Arkansas without permission; and failed to pay all of her ordered fees. Appellant does not deny the allegations;

she merely offers excuses for them, which the circuit court was free to accept or reject. The circuit court had before it sufficient evidence to revoke appellant's probation, and no meritorious argument for reversal could stem from this point.

From our review of the record and the briefs presented to us, we find compliance with Rule 4-3(j), and that the appeal is without merit. Accordingly, counsel's motion to be relieved is granted and the order of revocation is affirmed.

Affirmed; motion to be relieved granted.

PITTMAN and GLOVER, JJ., agree.