

ARKANSAS COURT OF APPEALS

D I V I S I O N II

No. CACR 09-345

DANIEL DORSEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 18, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-98-365]

HONORABLE DAVID BURNETT,
JUDGE

REBRIEFING ORDERED;
MOTION TO WITHDRAW DENIED

JOHN B. ROBBINS, Judge

This is the second time that this no-merit appeal is before this court. In the first appeal, *Dorsey v. State*, 2010 Ark. App. 742, we held that appellant’s counsel’s brief was in noncompliance with Arkansas Supreme Court Rules 4-2 and 4-3. Accordingly, we ordered appellant’s counsel to file a substituted brief containing all adverse rulings and a substituted addendum containing all relevant pleadings and any additional documents necessary on appeal. Appellant’s counsel has now filed a substituted brief and addendum. However, we hold that appellant’s counsel’s brief is still not in compliance with Rule 4-3(k)(1) because it fails to contain and adequately discuss all of the adverse rulings. Therefore, we must again order rebriefing.

This case originated on July 7, 1998, when appellant Daniel Dorsey entered a negotiated guilty plea to possession of cocaine with intent to deliver, which is a Class Y

felony. Mr. Dorsey was placed on a ten-year suspended imposition of sentence for that offense. The judgment and commitment order entered on July 7, 1998, reflects that Mr. Dorsey also pleaded guilty to three Class D felonies, and he received a six-year suspended imposition of sentence for each of those offenses. The judgment further revoked Mr. Dorsey's probation on a prior conviction for possession of a controlled substance, and he was sentenced to ten years in prison upon revocation.

Mr. Dorsey served some of his ten-year prison sentence, was paroled, and served some additional prison time after his parole was revoked. Sometime after he was released the second time, the State petitioned to revoke all three of appellant's six-year suspended sentences. After a revocation hearing in 2003, all of those suspended sentences were revoked, and Mr. Dorsey was sentenced to concurrent six-year prison terms on the underlying charges. In an unpublished opinion, *Dorsey v. State*, CACR03-1209 (Ark. App. Oct. 6, 2004), we affirmed those revocations and the resulting sentence. Since then, Mr. Dorsey was again released from prison.

The appeal that is now before this court pertains only to Mr. Dorsey's conviction for possession of cocaine with intent to deliver, for which he received a ten-year suspended imposition of sentence. The conditions of the suspended sentence required Mr. Dorsey to live a law-abiding life and not violate any state, federal, or municipal law. On August 28, 2007, the State filed a petition to revoke that suspension alleging that Mr. Dorsey committed multiple violations of his conditions, including selling cocaine on three occasions in March

2007. After a hearing, the trial court found that Mr. Dorsey violated the conditions of his suspension by engaging in the sale of drugs. The trial court revoked Mr. Dorsey's suspended sentence and entered a judgment and commitment order sentencing him to ten years in prison. Mr. Dorsey now appeals from that judgment.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Mr. Dorsey's counsel's motion is accompanied by a brief purporting to discuss all matters in the record that might arguably support an appeal, including the objections and motions made by appellant and denied by the trial court, and a statement of the reason each point raised cannot arguably support an appeal. Mr. Dorsey was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days. Mr. Dorsey has exercised that right and submitted pro se points.

At the revocation hearing, Officer Robert Langston testified about three sales of crack cocaine allegedly made by Mr. Dorsey to an undercover officer. These transactions occurred on March 5, 6, and 12, 2007. On each of these occasions, Officer Langston conducted surveillance from such a distance that he was unable to identify Mr. Dorsey from those locations during the sales. However, the first transaction was recorded on videotape and the video was introduced into evidence. The video shows the undercover officer parked in her car and speaking with a female. Upon viewing the video, Officer Langston testified that the female called Mr. Dorsey over to the car, and Mr. Dorsey exchanged a substance for cash.

The substance that was given to the undercover officer was tested at the crime lab, and it was determined to be cocaine.

Mr. Dorsey testified on his own behalf, and he denied selling any drugs. He indicated that the person captured on the video tape was his twin brother. Moreover, Mr. Dorsey maintained that when he pleaded guilty in July 1998, he pleaded guilty only to the three Class D felonies. Mr. Dorsey maintained that the charge for possession of cocaine with intent to deliver was supposed to have been nolle prossed.

In the abstract submitted by Mr. Dorsey's counsel, there is a brief summary of some of the adverse rulings that occurred during the revocation hearing. In appellant's counsel's argument section of the brief, counsel asserts that there were numerous adverse rulings and that none could support a meritorious appeal. However, we conclude that the brief does not comply with our rules for no-merit criminal cases.

Arkansas Supreme Court Rule 4-3(k)(1) provides that the no-merit brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The rule further provides that the abstract and addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court. In this appeal, appellant's counsel has failed to properly abstract all of the adverse rulings, and the addendum does not contain each exhibit that was admitted over appellant's

objections. Moreover, his brief is deficient because it does not provide a complete list of all of the specific adverse rulings with full and adequate explanations as to why each one cannot support a merit appeal. This court has held that a no-merit brief is deficient if it lacks a full discussion of each adverse ruling accompanied by proper citation to authority. *See Adaway v. State*, 62 Ark. App. 272, 972 S.W.2d 257 (1998).

As we often state, it is imperative that counsel follow the appropriate procedure when filing a motion to withdraw as counsel. *Walton v. State*, 94 Ark. App. 229, 228 S.W.3d 524 (2006). A no-merit brief that fails to satisfy the requirements of Rule 4-3(k)(1) must be rebriefed. *See Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. We cannot affirm an appellant's conviction and allow an attorney to withdraw without adequate discussion as to why each particular adverse ruling by the trial court could not be a meritorious ground for reversal. *Williams v. State*, 2011 Ark. App. 35. Accordingly, we order appellant's counsel to file a substituted brief and abstract containing and adequately addressing all adverse rulings within fifteen days from the date of this opinion. We strongly encourage counsel, prior to filing another substituted brief, abstract, and addendum, to review our rules to ensure that the brief complies with the rules and that there are no deficiencies. When the brief is filed, we will consider it together with the pro se points that Mr. Dorsey raised pursuant to Ark. Sup. Ct. R. 4-3(k)(2).

Rebriefing ordered; motion to withdraw denied.

MARTIN and BROWN, JJ., agree.