Cite as 2011 Ark. App. 386

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-370

	Opinion Delivered May 25, 2011
OTIS STRIBLING APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CR-2008-335-1]
V.	HONORABLE BERLIN C. JONES, JUDGE
STATE OF ARKANSAS APPELLEE	REBRIEFING ORDERED; MOTION TO WITHDRAW AS COUNSEL DENIED

DAVID M. GLOVER, Judge

Appellant Otis Stribling was tried by a jury, found guilty of possession of a controlled substance (cocaine), and was sentenced to thirty-six months in the Arkansas Department of Correction. This is the second time this no-merit case has been before our court. In January of this year, we remanded the case to settle and supplement the record, and for rebriefing. *Stribling v. State*, 2011 Ark. App. 57. Appellant's counsel has corrected the deficiencies noted in that opinion, and the case is now before us again in no-merit form.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Appellant has filed a list of *pro se* points in response to his attorney's motion, and the State has filed a brief in response.

Appellant's counsel's motion was accompanied by a brief purportedly referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to appellant made by the trial 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. An *Anders* brief may be submitted in lieu of an appeal on the merits only if such an appeal would be "wholly frivolous." *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). We remand this case for a second time because upon review, we have discovered that during the sentencing phase there was an adverse ruling that was not abstracted that would not be wholly frivolous.

After the jury found Stribling guilty of possession of cocaine, they gave the trial court two sentencing options—three years in the Arkansas Department of Correction and a $5000 fine, or an alternative sentence of five years' probation and a $5000 fine. The trial court stated that it would not consider "straight probation," at which time the State suggested probation with the condition of mandatory drug treatment and any other requirement associated with a rehabilitation program. At sentencing, the trial court ordered Stribling to serve three years' incarceration in the Arkansas Department of Correction with a judicial transfer to a CCC unit, where he would engage in a year-long intensive drug-rehabilitation program. One of the special conditions noted on Stribling's judgment and commitment order was that Stribling was to complete a mandatory drug program. *See Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909.

This court has ordered rebriefing in adversary form when it has been determined that an appeal would not be wholly frivolous. *Eads*, *supra*. When an appeal is submitted to this court under the *Anders* format and we believe that an issue is not wholly frivolous, we are required to deny appellant's counsel's motion to withdraw and order rebriefing in adversary form. *Tucker v. State*, 47 Ark. App. 96, 885 S.W.2d 904 (1994). Because appellant's counsel fails to demonstrate that an appeal would be wholly frivolous, we remand for adversarial rebriefing.

Rebriefing ordered; motion to withdraw as counsel denied.

GRUBER and HOOFMAN, JJ., agree.