

# ARKANSAS COURT OF APPEALS

## DIVISION II

No. CACR 10-608

MICHAEL GREGORY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** JUNE 1, 2011

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NO. CR-2007-1100]

HONORABLE GRAHAM PARTLOW,  
JUDGE

REBRIEFING ORDERED; MOTION  
TO WITHDRAW DENIED

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### JOHN B. ROBBINS, Judge

Appellant Michael Gregory pleaded guilty to commercial burglary on November 6, 2007, and was placed on a ten-year suspended imposition of sentence. On August 12, 2009, the State filed a petition to revoke appellant's suspension, alleging numerous violations of his conditions. After a revocation hearing, the trial court found that Mr. Gregory violated his conditions by failing to pay court-ordered restitution and fees, and by using alcoholic beverages. The trial court revoked Mr. Gregory's suspended imposition of sentence and sentenced him to five years in prison. Mr. Gregory now appeals.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court, Mr. Gregory's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Appellant's counsel's motion was 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. Gregory 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, but he has declined to file any points. Because Mr. Gregory's counsel has failed to comply with our rules for no-merit cases, we order rebriefing.

Deborah Wiseman, the collector of fines for the Crittenden County Sheriff, testified at the revocation hearing. Ms. Wiseman indicated in her testimony that Mr. Gregory was behind on paying his restitution and fees.

West Memphis Police Officer Steven Jackson also testified for the State, and he stated that at 5:20 a.m. on the morning of July 22, 2009, he responded to a call of a vehicle being driven erratically. Officer Jackson found Mr. Gregory in a parking lot near a truck. Officer Jackson could smell intoxicants, and Mr. Gregory admitted that he drank a few beers. According to Officer Jackson, Mr. Gregory failed field-sobriety tests and registered .24 on a breathalyzer test.

Arkansas Supreme Court Rule 4-3(k)(1) provides, in pertinent part:

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The 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 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 the present case the abstract submitted by Mr. Gregory's counsel is deficient because it does not contain any of the adverse rulings made by the trial court at the revocation hearing. We further conclude that the argument section of the brief is deficient as well. While appellant's counsel does address the sufficiency of the evidence and two of the adverse rulings in the brief, there were several other adverse rulings that were omitted from the brief. In particular, Mr. Gregory's counsel unsuccessfully argued, on pages 90–91 of the record, that the evidence about Mr. Gregory's alcohol use was illegally obtained and therefore inadmissible because Officer Jackson lacked probable cause to make a stop. Furthermore, our review of the transcript has identified additional adverse rulings, which have yet to be addressed by appellant's counsel, on pages 96–98 and 105–107 of the record.

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 address an adverse ruling does not satisfy the requirements of Rule 4- 3(k)(1) and must be rebriefed. *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 a particular adverse ruling by the trial court could not be meritorious grounds for reversal. *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001).

In addition to the abstract and brief being deficient for failure to include and address all adverse rulings, we also note that the statement of the case contained in the brief pertains

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to a different criminal case altogether, and we admonish appellant's counsel to correct that deficiency when rebriefing the case. We order appellant's counsel to file a conforming substituted brief and abstract containing and addressing all adverse rulings within fifteen days from the date of this opinion. We encourage counsel, prior to filing a substituted brief, abstract, and addendum, to review our rules and avoid additional deficiencies.

Rebriefing ordered; motion to withdraw denied.

MARTIN and BROWN, JJ., agree.