

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR10-644

JONATHAN E. OLIVAREZ  
APPELLANT  
  
V.  
  
STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** June 15, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. CR-05-574]

HONORABLE STEPHEN TABOR,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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## WAYMOND M. BROWN, Judge

This is a no-merit appeal from the revocation of appellant Jonathan Olivarez's suspended imposition of sentence (SIS) wherein he was sentenced to ten years in the Arkansas Department of Correction. Olivarez's attorney has filed a no-merit brief and a motion to withdraw pursuant to *Anders v. California*<sup>1</sup> and Arkansas Supreme Court Rule 4-3(k). Olivarez was provided a copy of his counsel's brief and was notified of his right to file a list of pro se points on appeal within thirty days. He has not raised any pro se points for reversal. We agree that an appeal would be wholly without merit. Accordingly, we affirm the revocation and grant counsel's motion to withdraw.

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<sup>1</sup>386 U.S. 738 (1967).

An attorney's request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client made on any objection, motion, or request made by either party.<sup>2</sup> The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal.<sup>3</sup> We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous.<sup>4</sup> If counsel fails to address all possible grounds for reversal, we can deny the motion to withdraw and order rebriefing.<sup>5</sup>

The only adverse ruling is the decision to revoke Olivarez's suspended sentence. Olivarez pled guilty to battery in the first degree and was sentenced to ten years' imprisonment with an additional ten years suspended.<sup>6</sup> Olivarez was also ordered to pay \$23,406.02 in restitution at the rate of \$150 a month beginning ninety days after his release from prison. The State filed a petition to revoke on February 3, 2009. An amended petition was filed on February 25, 2010. In the petition, the State alleged that Olivarez had violated the terms and conditions of his SIS by: failing to pay restitution as ordered; committing the offense of battery in the third degree on or about January 17, 2009; committing the offense

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<sup>2</sup>*Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001).

<sup>3</sup>*Id.*

<sup>4</sup>*Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001).

<sup>5</sup>*Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

<sup>6</sup>This sentence was to run concurrent with the sentences he received in case CR-04-1003 and CR-05-143.

of delivery of methamphetamine on January 6, 2010; committing the offenses of attempted capital murder, felon in possession of a firearm, and engaging in criminal gang activity on January 27, 2010; failing to pay his court-ordered fines, costs, and fees in case CR-04-1003.

Olivarez's revocation hearing took place on March 10, 2010. At the conclusion of the hearing, the court found that Olivarez had violated the terms of his SIS as alleged in the revocation petition.<sup>7</sup> This appeal followed.

A sentence of probation or a suspended sentence may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation or suspended sentence.<sup>8</sup> The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions.<sup>9</sup>

Olivarez's attorney contends that the trial court should be affirmed in its revocation. Counsel recites the testimony given by Det. Doug Brooks of the Fort Smith Police Department. Detective Brooks stated that he used a confidential informant to buy methamphetamine from Olivarez and that he was able to watch the drug transaction over a video link. Officer Dayton Leavitt of the Fort Smith Police Department stated that he was followed by another vehicle while off duty and that the passenger fired at his vehicle, causing

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<sup>7</sup>The court did not rely on the allegation that Olivarez committed battery in the third degree to revoke his suspended sentence.

<sup>8</sup>Ark. Code Ann. § 5-4-309 (Supp. 2009); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006).

<sup>9</sup>*Id.*

damage to his windshield. When the vehicle was stopped by on-duty officers, Olivarez was removed from the passenger seat. Officer Greg Smithson stated that Olivarez admitted to being a member of the Florencia gang when questioned at the police station. The State introduced the restitution ledger in case CR-05-574, which showed that Olivarez had paid only \$465 toward his restitution obligation although notice of parole was received on September 23, 2008.<sup>10</sup> A fine ledger was also introduced showing that Olivarez had not made any payments toward his fines in case CR-04-1003. The evidence supports the revocation of Olivarez's SIS on multiple grounds. Therefore, we agree that an appeal would be wholly without merit.

Affirmed; motion to withdraw granted.

ROBBINS and MARTIN, JJ., agree.

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<sup>10</sup>Olivarez paid the court-ordered amount of \$150 in April and May 2009, \$100 in June 2009, \$20 in October 2009, and \$45 in January 2010.