

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR10-972

ALVINITO COLINA BLUEBIRD  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered JUNE 29, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. CR05-1394]

HONORABLE JAMES O. COX,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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## RAYMOND R. ABRAMSON, Judge

The circuit court revoked Alvinito Bluebird's suspended imposition of sentence upon finding that he violated the terms and conditions of his SIS. The circuit court then sentenced Bluebird to six years' imprisonment and four years' SIS. Bluebird's counsel on appeal has filed a no-merit brief and a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals. In response, Bluebird has filed his own *pro se* points for reversal. We affirm the revocation and grant Bluebird's counsel's motion to withdraw.

Under Rule 4-3(k)(1), a motion to be relieved as counsel based on counsel's belief that the appeal is wholly without merit must be accompanied by a brief. The brief's argument section must list each adverse ruling and explain why none provide a potentially meritorious

ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1). The brief's abstract and addendum must cover all the material parts of the record, including each adverse ruling. Ark. Sup. Ct. R. 4-3(k)(1). Appellant's counsel must follow the appropriate procedure in these cases because "[t]his framework is a method of ensuring that indigents are afforded their constitutional rights." *Caldwell v. State*, 2009 Ark. App. 526, at 2, 334 S.W.3d 82, 83.

Here, Bluebird's counsel's brief addresses all of the adverse rulings made at the revocation hearing and otherwise complies with all of the strictures of Rule 4-3(k) and *Anders, supra*. We agree with Bluebird's counsel's conclusion: an appeal based upon any of these adverse rulings would be wholly frivolous.<sup>1</sup> Bluebird's *pro se* points for reversal are likewise unavailing. His arguments regarding ineffective assistance of counsel and double jeopardy are not preserved for our review because he failed to raise them below. *Davis v. State*, 368 Ark. 401, 409, 246 S.W.3d 862, 869 (2007). And Bluebird's argument regarding the "inconsistent statements" of the arresting officers is of no moment because we defer to the fact-finder's superior position to judge the witnesses' credibility and to weigh the evidence. *Foster v. State*, 104 Ark. App. 108, 110, 289 S.W.3d 476, 477 (2008). Thus, finding an appeal on the merits to be wholly without merit, we affirm the revocation and grant Bluebird's counsel's motion to be relieved as counsel.

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<sup>1</sup>We note that the June 2010 judgment and commitment order contains a clerical error. The first count is listed as "manufacturing methamphetamine," when it should have been "manufacture of marijuana," as reflected in the original June 2006 judgment and commitment order. This error, however, has resulted in no prejudice to Bluebird and is not reversible.

Cite as 2011 Ark. App. 474

Affirmed; motion granted.

ROBBINS and GRUBER, JJ., agree.