

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR11-49

KIRK BYRON STANSELL  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** June 29, 2011

APPEAL FROM THE PERRY COUNTY  
CIRCUIT COURT  
[No. CR 2008-9]

HONORABLE BARRY SIMS, JUDGE

REMANDED TO SETTLE THE  
RECORD; MOTION TO WITHDRAW  
DENIED

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## LARRY D. VAUGHT, Chief Judge

This is a no-merit appeal from the revocation of appellant Kirk Stansell's probation. On October 6, 2008, Stansell pled guilty to possession of drug paraphernalia with intent to manufacture methamphetamine and possession of drug paraphernalia in Perry County Circuit Court and was sentenced to five years' probation under the Community Punishment Act. A judgment and commitment order was entered on November 5, 2008. The State filed a petition for revocation of probation on March 26, 2009, alleging that Stansell violated the terms and conditions of his probation by failing to pay fines and costs as ordered by the court and failing to report to probation as directed. On November 3, 2009, Stansell pled guilty to the revocation allegations. The record contains a document entitled, "Conditions of Release of Probation," signed by Stansell on November 3, 2009, that indicates that his original five-year-probation

sentence was reinstated with the added condition that he attend a drug-treatment program. On December 23, 2009, the State filed a second petition for revocation of probation, alleging that Stansell failed to report and failed to enter a drug-treatment program as ordered. After a revocation hearing on September 7, 2010, the trial court revoked Stansell's probation and sentenced him to ten years' imprisonment. A judgment and commitment order was entered September 29, 2010. It is this order from which Stansell's counsel brings this no-merit appeal.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) (2011) of the Rules of the Arkansas Supreme Court and Court of Appeals, Stansell's counsel has filed a no-merit brief and a motion to withdraw on the grounds that an appeal of this case is without merit. Counsel's motion was accompanied by a brief discussing the evidence before the trial court and arguing that it is substantial and supports the revocation. Stansell was provided a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days. Stansell has not raised any pro se points for reversal. Accordingly, the State declined to file a responsive brief.

Stansell's counsel contends that the only adverse rulings were the trial court's denial of Stansell's motion prior to the hearing to relieve counsel and the ultimate finding that Stansell violated the conditions of his probation. However, we are unable to reach the merits of counsel's arguments.

While the record does contain some evidence that Stansell pled guilty to the first revocation petition filed by the State and that Stansell's original probation sentence was reinstated with the added condition that he attend a drug-treatment program, there is no

judgment and commitment order in the record or addendum confirming this fact. Without this order, we are unable to determine whether the added condition of attending the drug-treatment program was a part of Stansell's probation sentence. We further note that while the trial court found Stansell guilty at the probation revocation hearing, the court did not specify which condition Stansell violated.

We must have the entire record of proceedings in order to properly review a criminal case presented in an *Anders*, no-merit format. *Hadley v. State*, 2010 Ark. App. 536, at 2. If anything material to either party is omitted from the record by error or accident, we may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. *Id.* at 2 (citing Ark. R. App. P.–Civ. 6(e) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a))). As stated, the record in this case does not contain a judgment and commitment order documenting Stansell's 2009 guilty plea to the first probation revocation filed by the State. This missing order is the basis of the State's second probation revocation petition and is material to our review of the 2010 order of revocation. Without the order, we cannot decide the sufficiency of the evidence to support the finding that Stansell violated a condition, and we cannot consider the legality of the sentence imposed upon revocation. Under these circumstances, we remand for the record to be settled, and if necessary supplemented, within thirty days. Upon supplementation, the clerk will set a new briefing schedule. We encourage counsel, prior to filing a substituted brief, abstract, and addendum, to review our rules and avoid additional deficiencies.

Remanded to settle the record; motion to withdraw denied.

HART and GLOVER, JJ., agree.