Cite as 2011 Ark. App. 461

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-24

FRANK PARMLEY	APPELLANT	**Opinion Delivered** June 29, 2011 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [No. CR 2003-884-1]
V.		HONORABLE ROBIN FROMAN GREEN, JUDGE
STATE OF ARKANSAS	APPELLEE	REBRIEFING ORDERED; MOTION TO WITHDRAW DENIED

LARRY D. VAUGHT, Chief Judge

Appellant Frank Parmley was convicted of possession of a controlled substance (methamphetamine), possession of drug paraphernalia, and delivery of a controlled substance (methamphetamine) on May 11, 2004. He was sentenced to twelve years' imprisonment in the Arkansas Department of Correction, an additional twelve years suspended, and it credited 358 days for time served on the delivery charge. He was sentenced to ten years for each possession conviction and fined $2100. On January 22, 2010, a petition for revocation of suspended sentence was filed alleging that Parmley committed the offenses of manufacturing a controlled substance, possession of a controlled substance, and possession of drug paraphernalia. His 2004 suspended sentence was revoked on October 11, 2010. According to the judgment and commitment order filed on October 25, 2010, Parmley was sentenced

to 336 months' incarceration for possession of a controlled substance (a Class C felony); 336 months' incarceration for possession of drug paraphernalia (a Class C felony); and 336 months' incarceration for possession with intent to deliver a controlled substance (a Class Y felony). He also received a special condition to his sentence requiring that he "shall complete long term drug treatment while in custody."

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.[1] 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 because upon review, we have discovered that during the sentencing phase there were nonfrivolous adverse rulings that were not abstracted. We are particularly concerned with the seemingly illegal sentences associated with appellant's Class C felony convictions and the questionable reach of the trial court to place conditions on appellant once he is incarcerated. *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909.

---

[1]Appellant has not filed pro se points in this matter, although he was notified that in accordance with Arkansas Supreme Court Rule 4-3(k)(2), he was permitted to do so.

When an appeal is submitted to this court under the *Anders* format and we believe that issues exist that are 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.

HART and GLOVER, JJ., agree.