

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR10-646

OSCAR PEREZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 30, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NOS. CR03-255, CR03-687, CR03-  
914]

HONORABLE J. MICHAEL  
FITZHUGH, JUDGE

REBRIEFING ORDERED

---

## RAYMOND R. ABRAMSON, Judge

Appellant Oscar Perez was serving a suspended sentence for possession of marijuana with intent to deliver, possession of methamphetamine, possession of a defaced firearm, breaking and entering, and two counts of possession of drug paraphernalia. The State filed an amended petition to revoke on all counts—except the possession of a defaced firearm charge—on the basis that Perez had committed other criminal acts and had failed to pay restitution. After a hearing on the petition to revoke, the trial court granted the revocation and sentenced Perez to a combined total of thirty-one years' imprisonment on all the underlying counts.

Counsel for Perez filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court, asking to be relieved



as counsel. On April 6, 2011, this court ordered rebriefing due to deficiencies in the brief. See *Perez v. State*, 2011 Ark. App. 262.

Counsel for Perez has again filed a purported “no-merit brief” citing *Anders* and Rule 4-3(k)(1), but requests that the case be remanded to correct the judgment and commitment order by striking Perez’s conviction for possession of a defaced firearm. The clerk of this court furnished Perez with a copy of his counsel’s brief and notified him of his right to file pro se points. Perez filed a lengthy statement alleging other irregularities and claims. The State filed a response pursuant to Rule 4-3(k)(3), asserting that there are no meritorious issues requiring reversal and that Perez’s sentence was correct.

We again must order rebriefing—this time in adversary form—because counsel for Perez has raised an issue that disputes the legality of his client’s sentence. By asserting that the trial court imposed an illegal sentence, counsel has actually argued that there is a meritorious issue to be appealed. A brief cannot simultaneously be a no-merit brief pursuant to *Anders* and Rule 4-3(k)(1) and a brief on the merits. Thus, counsel cannot avail himself of the withdrawal procedures set forth in Rule 4-3(k), and we therefore direct counsel to rebrief the case on the merits. See *Parmley v. State*, 2011 Ark. App. 461 (“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.”). We note that, by ordering rebriefing in adversary form, we are not making any comment on whether the issue has merit. Rather, we are simply holding that counsel has failed to show that an appeal of appellant’s convictions would be wholly



Cite as 2011 Ark. App. 733

frivolous. We also note that counsel need not address any of the remaining adverse rulings previously identified as lacking merit.

Rebriefing ordered.

WYNNE and BROWN, JJ., agree.