

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-685

SHANDRA LATRICE LEFLORE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 11, 2012

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2009-632]

HONORABLE RALPH WILSON,
JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order revoking appellant's probation for failure to comply with the conditions that she pay fines, fees, and costs; that she report to her probation officer as directed; that she work faithfully at suitable employment; and that she pay a monthly probation fee. Appellant's counsel has filed a no-merit brief and a motion to be relieved as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k)(1), asserting that there is no non-frivolous argument to be made in support of an appeal. The motion is accompanied by counsel's abstract, addendum, and brief in which counsel purports to explain why there is nothing in the record that would arguably support an appeal. The clerk of this court furnished appellant a certified copy of her counsel's brief and motion to be relieved, informing appellant that she had the right to file pro se points for reversal. Appellant has filed such pro se points arguing, *inter alia*, that she was unable to work because of serious



physical injury and mental disabilities. We deny the motion to be relieved because appellant's counsel has failed to provide us with either an abstract or argument sufficient to demonstrate that there is no nonfrivolous argument to be made on appellant's behalf.

The test for determining whether an appeal is without merit under Rule 4-3(k) is not whether counsel thinks that the trial court committed no reversible error, but instead whether the points to be raised on appeal would be "wholly frivolous." *Ewells v. State*, 2009 Ark. App. 520. We make this determination after a full examination of all of the proceedings. *Id.* Because a defendant need not move for a dismissal in the trial court in order to preserve for appeal the issue of sufficiency of the evidence, counsel must address the sufficiency of the evidence in every no-merit appeal from a revocation. *Seay v. State*, 2010 Ark. App. 36. Because this is not an appeal from a criminal conviction governed by the "substantial evidence" standard of review, but is instead an appeal from a revocation hearing, we must determine whether the trial court's finding is clearly against the preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). Determining where the preponderance of the evidence lies necessarily requires a consideration of all of the relevant evidence; hence, all of the relevant evidence must be abstracted and discussed.

Here, however, appellant's attorney has failed to abstract or discuss a great deal of relevant evidence in this case. For example, the cross-examination of the probation officer was "not abstracted as not relevant against Court's ruling." In that cross-examination, however, the probation officer admitted that he had been contacted by appellant's therapist on at least one occasion when appellant was unable to report because of a scheduling conflict



between her therapy and her probation reporting requirements. This supports one of the contentions made by appellant in her pro se points for reversal. Relevant material relating to appellant's medical and physical condition has likewise been omitted from the abstract of her own testimony. In her points, appellant states that she was unable to work because of nerve damage to her arm. Nothing that has been abstracted supports this. However, the record contains appellant's unabstracted testimony that she was seriously injured in an automobile accident involving fatalities and that her injuries included a broken arm.

In a revocation case, we must consider all of the relevant evidence, including that evidence that favors the appellant, to determine whether the trial court's findings are clearly against the preponderance of the evidence. Because a great deal of material favorable to appellant was omitted from the abstract and ignored by appellant's attorney in his discussion of the sufficiency of the evidence to support revocation, we deny his motion to be relieved at this time. We order counsel to file a substituted brief that complies with the rule within thirty days from the date of this opinion. When the brief is filed, the motion and brief will be forwarded by the clerk to appellant so that she may raise within thirty days any points she chooses in accordance with Ark. Sup. Ct. R. 4-3(k)(2).

Motion to withdraw denied; rebriefing ordered.

WYNNE and MARTIN, JJ., agree.

C. Brian Williams, for appellant.

Dustin McDaniel, Att'y Gen., by: *William Andrew Gruber*, Ass't Att'y Gen., for appellee.