

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 11-309

JENNIFER PAYTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 11, 2012

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. CR-09-748]

HONORABLE CINDY THYER,
JUDGE

AFFIRMED; MOTION GRANTED

JOHN B. ROBBINS, Judge

Appellant Jennifer Payton was tried to a jury in Craighead County and was found guilty of possession of marijuana (a lesser-included offense of possession with intent to distribute) and possession of paraphernalia with intent to use it. A judgment was filed on November 15, 2010, reflecting her convictions for these crimes, and a timely notice of appeal followed. Payton's attorney has filed a motion to be relieved as counsel and a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k) (2010), in which counsel asserts that there is no issue of arguable merit to support an appeal.

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and addendum. Ark. Sup. Ct. R. 4-3(k)(1). The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit 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. *Id*; see also *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). This framework ensures that indigents are afforded their constitutional rights. *Campbell v. State*, 74 Ark. App. 277, 279, 47 S.W.3d 915, 917 (2001). In furtherance of the goal of protecting these constitutional rights, it is the duty of both counsel and of this court to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *See id.*

Counsel provided his client with a copy of the motion and brief by mailing it to her at the Craighead County Detention Center in Jonesboro, Arkansas. Payton did not file any pro se points for reversal. The State elected not to file a brief with our court. After a full examination under the proper standards, we hold that counsel provided a compliant “no merit” brief demonstrating that an appeal would be wholly without merit, and further, that counsel’s motion to be relieved should be granted.

Payton’s attorney presents the primary adverse ruling, which was the denial of her motions for directed verdict leading to the jury’s findings of guilt. A motion for directed verdict is the means by which a defendant challenges the sufficiency of the State’s proof. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003); *Saulsberry v. State*, 81 Ark. App. 419, 102 S.W.3d 907 (2003).

Payton freely admitted in her testimony that she had been a long-time, heavy user of marijuana and that whatever marijuana was found in the vehicle in which she was a passenger



belonged to her. She also claimed ownership of rolling papers, a pipe, and scales found in the vehicle.

In her attorney's motions, Payton's counsel argued that although she undoubtedly possessed marijuana, she had it only for personal use and not sale. Payton's counsel did not present a motion for directed verdict on the possession-of-paraphernalia charge, which would preclude any consideration of that issue on direct appeal. The jury ultimately concluded, agreeing with Payton, that she was guilty of simple possession of marijuana and not possession with intent to deliver. No issue of arguable merit could be raised on appeal of the sufficiency of the evidence to convict her of possessing both marijuana and paraphernalia.

The remaining adverse ruling resulted from the trial judge's sustaining a prosecutor's objection. Payton testified in the trial of the vehicle driver, Eric Sanders. In that testimony, Payton claimed ownership of all the marijuana found in Mr. Sanders's vehicle when it was stopped and searched. Marijuana was in plain view in her purse at her feet. When a sizable amount of marijuana was found in another part of the vehicle, Payton claimed ownership of that too. She claimed that the digital scales, pipe, and rolling papers in the vehicle were all hers, although she claimed no knowledge of the large amount of cash found in another compartment.

This testimony, by agreement of the parties, was read into the record by Deputy Prosecuting Attorney Corey Seats taking the witness stand to recite Payton's responses from the Sanders trial transcript. When that was concluded, defense counsel sought to cross-examine Seats about the State's theory in prosecuting Sanders. The prosecutor objected on



relevancy, adding that if defense counsel wanted to examine Seats, he would have to call Seats as a witness in the defense case. The trial judge sustained the objection on relevancy, remarking that Seats having read a transcript did not turn him into a witness at that point.

Evidentiary rulings are left to the sound discretion of the trial judge. *Gilcrease v. State*, 2009 Ark. 298, 318 S.W.3d 70. This was not an abuse of discretion because the reader of the transcript was not a “witness” at that point, and defense counsel could have called him as a witness in its case. In addition, there is no possible prejudice, particularly where Payton was convicted only of the crimes she admitted.

Having considered this under the proper standards required for no-merit appeals, we affirm Payton’s convictions and grant counsel’s motion to be relieved.

Affirmed; motion granted.

HART and ABRAMSON, JJ., agree.

Grant C. DeProw, for appellant.

No response.