

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR11-441

DAVID SWARTHOUT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 11, 2012

APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT,  
[NO. CR10-299; CR09-64]

HONORABLE PHILLIP T.  
WHITEAKER, JUDGE

MOTION TO WITHDRAW DENIED;  
REBRIEFING ORDERED

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## RAYMOND R. ABRAMSON, Judge

On August 14, 2009, appellant David Swarthout pled nolo contendere to a violation of the Arkansas hot-check statute, a class C felony, and was placed on supervised probation for two years.

On July 22, 2010, probation officers Kim Lloyd and Kevin Trigg conducted a home visit after Swarthout failed to report and failed a drug test. During the home visit, firearms were found in the residence occupied by Swarthout and his wife.

Swarthout was subsequently charged with and convicted of possession of a firearm by certain persons.<sup>1</sup> The State also petitioned to revoke Swarthout's probation on his previous hot-check conviction, which was granted at a separate hearing. Swarthout was sentenced to

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<sup>1</sup>He was also charged with possession of drug paraphernalia. That charge was dismissed for insufficient evidence at the close of the State's case.



five years in the Arkansas Department of Correction for both the felon-in-possession-of-a-firearm conviction and the violation of the conditions of his probation. A timely appeal followed.

Swarthout's counsel has filed, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2011), a motion to withdraw on the ground that the appeal is wholly without merit. As required by the rules, counsel simultaneously filed a brief purportedly containing an argument section listing all rulings adverse to Swarthout made by the circuit court with an explanation as to why each adverse ruling was not a meritorious ground for reversal.

However, after reviewing the record, we note that counsel failed to abstract or address the trial court's denial of Swarthout's request that his case be transferred to a post-adjudication court—the veteran's treatment court—or his request for probation. Our supreme court has expressly held that a no-merit brief in a criminal case that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(k)(1) and must be rebriefed. *Sartin v. State*, 2010 Ark. 16. Therefore, we order counsel to cure the deficiencies by filing a substituted brief, abstract, and addendum within fifteen days from the date of this opinion. Ark. Sup. Ct. R. 4-2(b)(3) (2011). By ordering rebriefing, we are not expressing an opinion as to the merits of any issue. Counsel is free to file either a brief on the merits or another no-merit brief.

Motion to withdraw denied; rebriefing ordered.

HART and ROBBINS, JJ., agree.

*Robert M. "Bobby" Golden*, for appellant.

No response.