

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-240

LARRY EUGENE WALDEN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JANUARY 11, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR-2009-676]

HONORABLE J. MICHAEL FITZHUGH,
JUDGE

MOTION DENIED; REBRIEFING
ORDERED

ROBIN F. WYNNE, Judge

Larry Eugene Walden appeals from his conviction of aggravated robbery. He was sentenced to sixty years' imprisonment for the offense as a habitual offender. His appellate counsel has filed a motion to withdraw and 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 and Court of Appeals.

Appellant was provided a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days. Appellant has not filed any pro se points for reversal. Accordingly, the State declined to file a responsive brief. We hereby deny counsel's motion and order rebriefing.

An attorney's request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client



that were made on any objection, motion, or request made by either party. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* This court is bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001). If counsel fails to address all possible grounds for reversal, this court must deny the motion to withdraw and order rebriefing. *See Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877.

We hold that counsel has failed to comply with Rule 4-3(k)(1). Appellant was tried on one count of aggravated robbery. Prior to the case being submitted to the jury for a verdict, appellant's trial counsel made a motion to have an instruction given to the jury on the lesser-included offense of robbery. Counsel also made a motion in the alternative to have a modified aggravated-robbery instruction given. Both motions were denied, and the regular instruction on aggravated robbery was submitted to the jury. In the brief accompanying the motion to withdraw, appellate counsel notes that the trial court denied the motion for a charge on the lesser-included offense of robbery. However, counsel fails to explain why this ruling by the trial court would not provide meritorious grounds for reversal.

After the verdict was rendered and the jury's sentencing recommendation given, appellant's trial counsel made a motion for a new trial, in which he argued that the jury's verdict was driven by passion and the sixty-year sentence shocked the conscience. That motion was denied by the trial court. In his brief, appellate counsel fails to list this adverse ruling or explain why it would not present meritorious grounds for reversal. These are merely



examples of adverse rulings that should have been addressed in counsel's brief, and we do not intend that counsel rely upon them as an exclusive list. We strongly encourage counsel, prior to filing a substituted brief, abstract, and addendum, to review our rules in order to avoid additional deficiencies.

We express no opinion as to whether the new appeal should be on the merits or should be made pursuant to *Anders, supra*, and Rule 4-3(k)(1). If a no-merit brief is filed, counsel's motion and brief will be forwarded by the clerk to appellant so that, within thirty days, he may raise any points he chooses in accordance with Rule 4-3(k)(2) of the Rules of the Arkansas Supreme Court and Court of Appeals. Counsel's motion to withdraw is denied, and we order rebriefing.

Motion denied; rebriefing ordered.

PITTMAN and MARTIN, JJ., agree.

Spears, Huffman & Butler, PLLC, by: *Bryan R. Huffman*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.