

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 09-1250

SHANNON WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 1, 2012

APPEAL FROM THE GREENE
COUNTY CIRCUIT COURT,
[NO. CR-2008-468]

HONORABLE DAVID N. LASER,
JUDGE

REBRIEFING ORDERED; MOTION
TO BE RELIEVED AS COUNSEL
DENIED

WAYMOND M. BROWN, Judge

On June 23, 2009, a Greene County jury found the appellant, Shannon Williams, guilty of one count of rape and sentenced him to fifteen years in the Arkansas Department of Correction. His attorney has filed a motion to be relieved as counsel, citing an inability to find a meritorious ground for reversal, and has submitted a no-merit brief pursuant to *Anders v. California*¹ and Ark. Sup. Ct. R. 4-3(k).² The clerk of our court furnished appellant with a copy of his counsel's brief and notified him of his right to file a statement of pro se points for reversal within thirty days. Appellant has not filed a statement of points.

¹386 U.S. 738 (1967).

²Appellant had private counsel at trial. His court-appointed appellate attorney is making the motion to be relieved as counsel.



This is the third time this case has been before us. On January 19, 2011,³ and October 26, 2011,⁴ we denied counsel's motion to withdraw and ordered rebriefing because counsel had not complied with the requirements of our rules. Once again, however, we are unable to reach the merits because counsel for appellant has submitted another noncompliant brief.

Arkansas Supreme Court Rule 4-3 requires a no-merit brief to contain a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party, as well as an explanation as to why each adverse ruling is not a meritorious ground for reversal.⁵ The rule also requires the abstract and addendum of the brief to contain all such adverse rulings.⁶ The brief submitted by counsel in this case fails to list all rulings that were adverse to appellant, and the abstract does not contain all adverse rulings. In addition, with regard to a number of the adverse rulings that *were* included in the brief, counsel has failed to explain why they do not raise meritorious grounds for reversal. An appellate court presented with a no-merit petition cannot affirm an appellant's conviction when counsel's brief contains no discussion as to why a particular ruling by the trial court is

³2011 Ark. App. 41.

⁴2011 Ark. App. 643.

⁵Ark. Sup. Ct. R. 4-3(k)(1) (2011); *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001). In addition, Ark. Sup. Ct. R. 4-2(b)(5) (2011) requires the appellant to submit an abstract of the material parts of all transcripts in the record and provides that information in a transcript is material if it is essential for the appellate court to confirm its jurisdiction, understand the case, and decide the issues on appeal.

⁶*Id.*



not a meritorious ground for reversal.⁷ Merely describing the objection, the court's ruling, and the parties' reactions to the ruling is not sufficient to meet this requirement. Counsel must actually explain why, under the law, the adverse ruling does not present meritorious grounds for an appeal.

Counsel's brief is further noncompliant in that it frequently fails to provide citations to the abstract. Under Rule 4–2, reference in the argument portion of a party's brief to materials found in the abstract or addendum must be followed by a reference to the page number of the abstract or addendum where the material may be found.⁸ In the argument portion of the brief in this case, counsel discusses numerous rulings of the court and cites to the trial record where the relevant ruling is located, but fails to cite to the abstract.

In light of these deficiencies, we again order counsel to file a substituted brief, abstract, and addendum within fifteen days from the date of this opinion, pursuant to Ark. Sup. Ct. R. 4–2(b)(3) (2011). We strongly encourage appellate counsel, prior to filing the supplemental addendum, to review our rules to ensure that no additional deficiencies are present, and caution counsel that this court will not go further unless and until we receive a brief that complies with our rules. Given the fact that this is the third time we are remanding for rebriefing, we also recommend that counsel review Rule 4–2(c)(3), which provides that attorneys who fail to comply with the Rule's requirements after being afforded an opportunity to cure deficiencies may be referred to the Office of Professional Conduct.

⁷*Frazier v. State*, 2009 Ark. App. 521, 336 S.W.3d 878; see also *Brady v. State*, *supra*.

⁸Ark. Sup. Ct. R. 4–2(a)(7) (2011).



Cite as 2012 Ark. App. 113

Rebriefing ordered; motion to be relieved as counsel denied.

GRUBER and MARTIN, JJ., agree.

Mylossia M. Blankenship, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.