

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 11-368

PHILLIP KIMMEL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 18, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-2003-767-5-2]

HONORABLE JODI RAINES
DENNIS, JUDGE

REMANDED FOR REBRIEFING;
MOTION TO WITHDRAW DENIED

DOUG MARTIN, Judge

This is a no-merit appeal from the revocation of appellant Phillip Kimmel's probation wherein he was sentenced to fifteen years in the Arkansas Department of Correction. Kimmel's counsel has filed a motion to withdraw and a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k)(1) (2011). Kimmel was provided a copy of his counsel's brief and was notified of his right to file a list of pro se points on appeal within thirty days; however, he has not raised any pro se points for reversal.

Kimmel pled guilty in June 2005 to charges of attempted manufacture of a controlled substance, possession of a controlled substance, and possession of drug paraphernalia. At that time, the Jefferson County Circuit Court sentenced him to 60 months' probation. Kimmel was subsequently arrested for possession of a controlled substance with intent to deliver and possession of drug paraphernalia, and on November 26, 2007, the State filed a petition to



revoke his probation. At a hearing on May 14, 2009, Kimmel admitted that he had violated the terms and conditions of his probation, and the circuit court entered an order on May 18, 2009, accepting Kimmel's admission but withholding sentencing until a review hearing, which was scheduled for August 13, 2009.

Kimmel failed to appear for the August 2009 hearing, and a bench warrant was issued for his arrest. The circuit court eventually held a hearing on Kimmel's sentencing on November 18, 2010, at which time Kimmel acknowledged his previous admission to violating his probation. The circuit court then sentenced Kimmel to concurrent fifteen-year sentences on the underlying offenses on December 15, 2010. An amended judgment and commitment order was entered on January 12, 2011, and Kimmel filed his notice of appeal that same day.

Counsel has filed a no-merit brief and motion to be relieved as counsel, contending that the only adverse ruling in this case was the circuit court's order revoking Kimmel's probation. Counsel urges that, because Kimmel admitted that he had violated the terms and conditions of his probation at a May 2009 hearing, any argument that the circuit court's ruling was erroneous would be without merit.

The record, however, does not contain a transcript of this May 14, 2009 hearing. Arkansas Supreme Court Administrative Order No. 4 provides that, "[u]nless waived on the record by the parties, it shall be the duty of the circuit court to require that a verbatim record be made of all proceedings . . . pertaining to any contested matter before the court or the jury." This court cannot conduct its full examination of the record required in no-merit cases



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in the absence of the complete record. *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001).

Accordingly, we remand this case to the circuit court for the record to be settled and supplemented with a transcript of the May 14, 2009 hearing; this is to occur within thirty days. We further order rebriefing and direct counsel to include an abstract of the hearing. After the record is supplemented, Kimmel's counsel will have fifteen days to file a substituted brief. Ark. Sup. Ct. R. 4-2(b)(3) (2011).

Remanded to settle and supplement the record; rebriefing ordered; motion to withdraw denied.

PITTMAN and WYNNE, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

No response.