

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 11-368

PHILLIP KIMMEL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 9, 2012

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

HONORABLE JODI RAINES
DENNIS, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

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. We find no error, and we affirm and grant counsel's motion to be relieved.

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 sixty months' probation. Among the conditions of his probation were the requirements that he must not commit a criminal



offense punishable by imprisonment, that he must report as directed to a supervising officer, and that he must complete 120 hours of community service.

Kimmel was subsequently arrested on August 29, 2007, for possession of a controlled substance with intent to deliver and possession of drug paraphernalia. On November 26, 2007, the State filed a petition to revoke his probation, alleging that Kimmel had violated the conditions of his probation by not obeying federal and state laws, by using illegal drugs, by failing to report as instructed, and by not obeying the court's order to complete 120 hours of community service.

At a hearing on May 14, 2009, Kimmel acknowledged that he had not reported to his probation officer.¹ The circuit court entered an order on May 18, 2009, in which it accepted Kimmel's admission that he violated the terms and conditions of his probation but withheld 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 and again admitted that he had violated the terms and conditions of his probation. The circuit court then revoked Kimmel's probation and sentenced him to concurrent terms of fifteen years on the underlying offenses in an order entered on

¹This court issued an opinion on January 18, 2012, remanding the case to the circuit court because the record did not contain a transcript of the May 14, 2009 hearing. *Kimmel v. State*, 2012 Ark. App. 70. The record was supplemented with a transcript of that hearing, and Kimmel's counsel has filed a supplemental brief with this court containing an abstract of the hearing.



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.

As noted above, counsel has filed a no-merit brief and motion to be relieved as counsel, contending that there were no adverse rulings by the trial court that would warrant reversal. The record reflects that the only adverse ruling in this case was the circuit court's order revoking Kimmel's probation. In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003).

In the present case, Kimmel admitted that he violated the terms and conditions of his probation; as such, any argument that the circuit court's ruling was erroneous would clearly be without merit. Accordingly, we affirm the circuit court's revocation decision and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ROBBINS and HOOFFMAN, JJ., agree.

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

No response.