

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-988

DAVID MICHAEL WEAVER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR10-462-2]

HONORABLE MICHAEL MEDLOCK,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW AS COUNSEL
DENIED

RAYMOND R. ABRAMSON, Judge

This is a no-merit appeal from appellant David Michael Weaver's rape conviction. Because we find an issue of possible merit that was not addressed in the appellant's brief, we deny counsel's motion to withdraw and order rebriefing in adversarial form.

On August 24, 2010, Weaver was charged with the rape of his six-year-old daughter, G.W. A trial was held in July 2011, and at the conclusion of the evidence, the jury convicted Weaver of rape and sentenced him to twenty-five years in the Arkansas Department of Correction. The court, at the State's request, also ordered that Weaver enroll in and complete the Reduction of Sexual Victimization Program (RSVP) while incarcerated.

Counsel for Weaver filed a brief and motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court



and Court of Appeals, arguing that there are no issues of arguable merit to support reversal. Weaver filed pro se points for reversal, and the State responded.

Anders requires that after an appellant's counsel submits a no-merit brief, this court conduct a full examination of the proceedings to decide if the appeal is "wholly frivolous." *Runion v. State*, 2012 Ark. App. 30. We undertake this thorough review of the full record regardless of whether the appellant identifies the trial court's errors. *Id.* Based on our review of the case at bar, we have discovered a ground for possible reversal that was not abstracted or discussed by Weaver's counsel and that may not be wholly frivolous: whether the circuit court imposed an illegal sentence when it ordered Weaver to complete a sex-offender treatment program while in the custody of the Department of Correction. See *White v. State*, 2012 Ark. 221, 408 S.W.3d 720.

When an appeal is submitted to this court under the *Anders* format and we believe that an issue is not wholly frivolous, we are required to deny appellant's counsel's motion to withdraw and order rebriefing in adversarial form. *Tucker v. State*, 47 Ark. App. 96, 98, 885 S.W.2d 904, 905 (1994). Because Weaver's counsel fails to demonstrate that an appeal would be wholly frivolous, we remand for adversarial rebriefing.

Rebriefing ordered; motion to withdraw as counsel denied.

VAUGHT, C.J., and ROBBINS, J., agree.

Weber & Burns, PLLC, by: *Jeffrey Weber*, for appellant.

Dustin McDaniel, Att'y Gen., by: *William Andrew Gruber*, Ass't Att'y Gen., for appellee.