

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR11-1278

CARL HUBBARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CR 2010-1263-1]

HONORABLE ROBIN F. GREEN,
JUDGE
DISMISSED; MOTION GRANTED

ROBIN F. WYNNE, Judge

Carl Hubbard appeals from his conviction on ten counts of possession of matter depicting sexually explicit conduct involving a child. His counsel has filed a motion to withdraw that is accompanied by a no-merit brief. We dismiss the appeal and grant the motion to withdraw.

On August 22, 2011, Hubbard pled nolo contendere to the ten charges. Upon examination by the court, Hubbard denied that he was under the influence of any drugs, alcohol, or medications at the time of his plea. He also indicated that he was satisfied with the legal services he received from his trial counsel. Hubbard further agreed with the State's allegation that he had child pornography in his possession. Hubbard and the State had reached a plea agreement under which, in exchange for his plea of nolo contendere, the State recommended that he be sentenced to ten years' imprisonment on the first six counts to be served consecutively, for a total sentence of sixty years' imprisonment. The State also



recommended that he receive ten years' suspended imposition of sentence, to be served concurrent to each other but consecutive to his term of imprisonment. The trial court accepted Hubbard's plea and sentenced him in accordance with the parties' agreement in a judgment and commitment order filed on August 24, 2011. This appeal followed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), counsel for appellant has filed a motion to withdraw, in which he argues that there would be no merit to an appeal in the case. A motion of this type must be accompanied by an abstract and a brief listing and discussing all rulings adverse to appellant and explaining why there would be no merit to an appeal. Ark. Sup. Ct. R. 4-3(k) (2011). Hubbard did not file any pro se points for reversal. As a result, the State did not file a brief.

We agree with counsel that the appeal is without merit because Hubbard is not permitted to bring an appeal. Except as provided by Arkansas Rule of Criminal Procedure 24.3(b), there shall be no appeal from a plea of guilty or nolo contendere. Ark. R. App. P.–Crim. 1(a) (2011). Arkansas Rule of Criminal Procedure 24.3(b) allows a defendant to enter a conditional guilty plea under certain specified circumstances. Hubbard did not enter a conditional plea under Rule 24.3(b).

Our supreme court has recognized two other exceptions to Rule 1(a). An appeal may be taken after a guilty plea when the issue on appeal is one of evidentiary errors that arose after the plea but during the sentencing phase of the trial, regardless of whether a jury was impaneled or the trial judge sat as the trier of fact during that phase, *Johnson v. State*, 2010 Ark. 63, and an appeal may be taken from the denial of a postjudgment motion to amend an incorrect or illegal sentence following a guilty plea, *Reeves v. State*, 339 Ark. 304, 5 S.W.3d 41 (1999). Neither of those exceptions applies here. Thus, Hubbard's appeal is dismissed and



Cite as 2012 Ark. App. 443

the motion to withdraw is granted. *See Kelley v. State*, 2012 Ark. App. 36.

Dismissed; motion granted.

GLOVER and BROWN, JJ., agree.

James Law Firm, by: *Lee D. Short*, for appellant.

No response.