

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR11-921

ROBERT ANDREW TERRY  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered AUGUST 29, 2012

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT,  
[NO. CR-10-1574]

HONORABLE RALPH WILSON, JR.,  
JUDGE

MOTION TO WITHDRAW DENIED;  
REBRIEFING ORDERED

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## CLIFF HOOFFMAN, Judge

Appellant Robert Andrew Terry was convicted by a jury of aggravated residential burglary, aggravated robbery, and attempt to commit capital murder. He was sentenced to forty years' imprisonment on each charge, to be served concurrently. 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, Terry's counsel has filed a motion to withdraw, alleging that this appeal is wholly without merit. Terry was notified of his right to file pro se points for reversal; however, he has not done so. Because a review of the record indicates that counsel has failed to abstract and discuss at least one adverse ruling and that he further failed to discuss why another adverse ruling is without merit, we deny counsel's motion to withdraw and order rebriefing.



In addition to the denial of Terry's motions for directed verdict, counsel has abstracted and discussed four adverse evidentiary rulings, including two hearsay objections, an objection to the introduction of pictures from a cell phone purportedly belonging to Terry, and the admission of a crime lab report. However, there is another adverse ruling that is abstracted by counsel but not discussed in the argument section of his brief, which is the denial of Terry's proffered jury instruction on the lesser-included offense of residential burglary. Counsel's failure to discuss why there would be no merit to an appeal on this issue does not comport with the requirements of a no-merit brief under Ark. Sup. Ct. R. 4-3(k)(1) (2011).

Also, from our review of the record, counsel has failed to abstract and discuss at least one other adverse ruling that occurred during counsel's voir dire of the jury panel, when the prosecutor objected to counsel's inquiry into the jurors' feelings on the sentencing range for the charged offenses. The trial court sustained this objection, stating that the jurors are instructed not to consider punishment during the guilt/innocence phase of the trial. Under Rule 4-3(k)(1), before this court may grant counsel's motion to withdraw, he must abstract and adequately explain why each adverse ruling is not a meritorious ground for reversal in his brief, and a failure to do so requires us to order rebriefing. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877; *Gregory v. State*, 2011 Ark. App. 406. Therefore, we deny the motion to withdraw and direct counsel to submit a substituted abstract and brief correcting these deficiencies within fifteen days from the date of our opinion.

Motion denied; rebriefing ordered.

PITTMAN and GRUBER, JJ., agree.

S. Bernard Butler, Jr., for appellant.



Cite as 2012 Ark. App. 453

No response.