

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-597

STEPHANIE DENISE CLARK
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2009-689]

HONORABLE JOHN N.
FOGLEMAN, JUDGE

AFFIRMED; MOTION GRANTED

ROBIN F. WYNNE, Judge

Stephanie Denise Clark appeals from the revocation of her probation. Her counsel has filed a motion to withdraw that is accompanied by a no-merit brief. We affirm the judgment of the trial court and grant the motion to withdraw.

In 2009, Clark was found guilty of second-degree forgery and placed on probation for a period of thirty-six months. Among the conditions of her probation was a requirement that she pay restitution in monthly payments of seventy dollars beginning on September 1, 2009. There was also a requirement that she report to her probation officer as directed. On February 4, 2010, the State filed a petition to revoke her probation in which it alleged that she violated the terms of her probation by (1) failing to pay fines, costs, and fees; (2) failing to report to her probation officer; (3) failing to pay probation fees; (4) failing to notify the sheriff and her probation officer of her current address and employment; and (5) possessing



and using cocaine.

At the hearing on the revocation petition, the State produced testimony that Clark had not made any payments toward her restitution. When the State attempted to introduce a ledger reflecting that no payments had been made, Clark objected, arguing that while the requirement to pay seventy dollars per month was included in the conditions of her probation, the requirement was not listed in the judgment and commitment order. The State responded that the judgment and commitment order incorporated the conditions of probation. The trial court overruled Clark's objection and admitted the ledger into evidence. April Wilson, Clark's probation officer, testified that Clark failed to report on several occasions and had not reported for approximately nine months prior to the hearing. Clark testified that she had several medical conditions, that her previous probation officer was aware of these conditions, and that her conditions were the reason she failed to report.

Following the testimony, the trial court revoked Clark's probation due to her failure to report to her probation officer. Clark was sentenced to twenty-four months' imprisonment in a judgment and commitment order filed on March 14, 2011. This appeal followed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), Clark's counsel 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 brief listing and discussing all rulings adverse to the appellant and explaining why there would be no merit to an appeal. Ark. Sup. Ct. R. 4-3(k) (2011). Clark did not file any pro se points for reversal. As a result, the State did not file a brief.



The only rulings at the revocation hearing adverse to Clark were the trial court's denial of her objection to the restitution-payment ledger and the trial court's decision to revoke her probation. We agree with counsel that there would be no merit to a challenge to the sufficiency of the evidence to support the trial court's decision to revoke Clark's probation. One of the conditions of her probation was that she report to her probation officer as directed. Her probation officer testified that she did not do this. Although Clark offered an excuse for her failure to report, it is the province of the fact-finder to determine the credibility of witnesses and the weight to be given to their testimony. *See Nelson v. State*, 344 Ark. 407, 39 S.W.3d 791 (2001). The trial court weighed the testimony of the witnesses and determined that Clark had violated the terms of her probation by failing to report to her probation officer. We also agree with counsel that the trial court's denial of Clark's objection regarding the payment ledger does not raise a meritorious issue for appeal because the trial court revoked Clark's probation based on her failure to report, not her failure to pay restitution.

We hold that counsel has complied with the requirements of Rule 4-3(k). The judgment of the trial court is affirmed, and the motion to withdraw is granted.

Affirmed; motion granted.

GLOVER and BROWN, JJ., agree.

C. Brian Williams, for appellant.

No response.