

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-228

TIMOTHY SMITH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED AUGUST 29, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT,
[NO. CR-2007-1005-2]

HONORABLE ROBERT H. WYATT,
JR., JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED.

ROBERT J. GLADWIN, Judge

This is a no-merit appeal from the revocation of appellant's probation and the resulting twenty-year prison sentence. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) (2011) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the basis that the appeal is without merit. Appellant's counsel's motion was accompanied by a brief discussing all matters in the record that might arguably support an appeal, including the only adverse ruling, the trial court's ultimate determination that appellant violated a condition of his probation, and a statement as to why the evidence was sufficient and cannot support a meritorious appeal. Appellant, Timothy Smith, was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but appellant did not file any points for reversal. Accordingly, the State declined to file a brief. We grant counsel's motion to withdraw and affirm the revocation.



Appellant was sentenced to three years' probation on March 12, 2009, for his conviction of residential burglary and theft of property. On March 4, 2010, the State filed a petition to revoke alleging that he had been charged with two counts of committing a terroristic act and six counts of aggravated assault. The petition was amended on March 11, 2010, to assert further allegations of violations of the conditions of appellant's probation, including appellant's committing aggravated residential burglary, testing positive for marijuana on two occasions, failing to report, failing to pay fines and fees, and failing to complete community service.

At the hearing on the petition to revoke, Christy Calhoun testified that appellant and two other men rushed into her father's house and held her at gunpoint before her father chased them away with his own weapon. Deputy U.S. Marshal Phillip Peckham testified that appellant admitted his participation and showed the police the route in which he ran from the victim's house. Police located the gun that appellant had carried and discarded while fleeing, as well as appellant's shoe that was left along the escape route. Deputy Peckham further testified that appellant described to police how he became involved in the crime and how he and the others accomplished it. The probation officer assigned to appellant testified that appellant had violated the rules of probation that he had signed in March 2009 by breaking the law, using controlled substances, not reporting, not paying the balance owed the sheriff's office, and not performing his community-service hours.

The trial court found that appellant violated the conditions of his probation by testing positive for a controlled substance; failing to report in September, October, November, and



December of 2009; failing to pay the sheriff's fees, fines, and costs of \$2050; failing to complete community service; and committing a residential burglary. Appellant was sentenced to ten years' imprisonment for theft of property and twenty years' imprisonment for residential burglary, concurrently. A judgment and commitment order reflecting the convictions was filed on January 11, 2012, and appellant filed a notice of appeal on January 23, 2012.

If, after a conscientious examination of the record, an attorney believes that an appeal would be wholly frivolous, he can request permission from the court to withdraw. *Anders, supra*. This request, however, must be accompanied by a brief discussing all adverse rulings that might arguably support the appeal and explaining why each adverse ruling is not a meritorious ground for reversal. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001).

The only adverse ruling noted by counsel was the revocation itself. As to the evidence supporting the revocation, counsel notes the testimony of the victim, Christy Calhoun, the testimony of Deputy U.S. Marshal Peckham, which included appellant's statements given to the police, and the further evidence of appellant's violations. The trial court noted that only one violation was necessary to revoke. Based on our review of the record and the brief presented to this court, we conclude that there has been full compliance with Rule 4-3(k) and that the appeal is without merit. Counsel's motion to be relieved is granted, and the judgment of conviction is affirmed.

Affirmed; motion to withdraw granted.

HART and MARTIN, JJ., agree.

Potts Law Office, by: Gary W. Potts, for appellant.
No response.