

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR11-935

JOHN WILLIAM WAKELEY  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT,  
[NO. CR-02-185-I]

HONORABLE ROBIN F. GREEN,  
JUDGE

REMANDED FOR  
SUPPLEMENTATION OF THE  
RECORD; REBRIEFING ORDERED;  
MOTION TO WITHDRAW DENIED

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**RAYMOND R. ABRAMSON, Judge**

This is an appeal from a judgment and commitment order entered upon the revocation of a sentence of probation. Appellant John Wakeley's attorney has filed a motion to withdraw as counsel and a no-merit brief under *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k)(1) (2011), asserting that an appeal would be wholly frivolous and that this case should be affirmed. Appellant has exercised his right to file pro se points for reversal,<sup>1</sup> and the State has filed a response brief.

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<sup>1</sup>Appellant's pro se points include arguments that his counsel was ineffective, that his motion for continuance should have been granted, and that he was denied the opportunity to present evidence on his behalf—all leading to what he contends is an unduly harsh sentence.



Appellant entered a guilty plea on September 13, 2004, and he was sentenced by the Benton County Circuit Court to fifteen years' supervised probation on each of the following counts: arson (a Class A felony), residential burglary (a Class B felony), and theft of property (a Class C felony). Appellant's probation supervision took place in Missouri. On December 17, 2010, the State of Arkansas filed a petition for revocation of probation based on a guilty plea appellant had entered in Newton County, Missouri, to Class C felony theft/stealing on September 17, 2010.

A hearing was held on the revocation petition on June 2, 2011. At the beginning of the hearing, the defense moved for a continuance asserting that, despite a motion for discovery being filed, the defense had not received a copy of appellant's probation file. The State responded that it did not have a copy of appellant's file—the state of Missouri did. The court denied the motion and then asked appellant if he admitted to pleading guilty to a Class C felony of stealing in Newton County, Missouri. Appellant admitted to the guilty plea and explained that he had transferred money from one bank to another without being able to cover it. Based on that admission, the court revoked appellant's probation and sentenced him on each count to twenty years in the Arkansas Department of Correction with an additional ten years suspended.

In his brief, counsel addresses the denial of the motion for continuance and the decision to revoke appellant's probation. In furtherance of the goal of protecting constitutional rights, it is the duty of both counsel and of this court to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous.



*Walton v. State*, 94 Ark. App. 229, 231, 228 S.W.3d 524, 526 (2006). In this case, we have identified at least one issue—an illegal sentence—that prevents us from affirming this case and granting counsel’s motion to withdraw.

Upon revoking a sentence of probation, the court may impose any sentence on the defendant that might have been imposed originally for the offense for which he was found guilty. Ark. Code Ann. § 16-93-308 (Supp. 2011). Arkansas’s sentencing statute provides:

(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations:

. . . .

(2) For a Class A felony, the sentence shall be not less than six (6) years nor more than thirty (30) years;

(3) For a Class B felony, the sentence shall be not less than five (5) years nor more than twenty (20) years;

(4) For a Class C felony, the sentence shall be not less than three (3) years nor more than ten (10) years[.]

Ark. Code Ann. § 5-4-401 (Repl. 2006). Here, it appears that the maximum allowable sentences for appellant’s Class B and Class C felony convictions were exceeded by the sentences of twenty years’ imprisonment with an additional ten years suspended.<sup>2</sup>

Furthermore, the terms and conditions of appellant’s probation are not included in the record or the addendum. Without these, we cannot decide the sufficiency of the evidence to support the finding that appellant violated a condition of his probation. Under

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<sup>2</sup>We note that appellant’s sentence of fifteen years’ probation for the Class C felony theft of property also exceeds the statutory maximum sentence.



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these circumstances, we remand for the record to be supplemented within thirty days. Upon supplementation, the clerk will set a new briefing schedule. Counsel is directed to file a brief in adversarial format, discussing the issue of the illegal sentence and any other potentially meritorious issues. The State will then have the opportunity to file a response brief.

Remanded for supplementation of the record; rebriefing ordered; motion to withdraw denied.

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

*Law Office of Farris Merritt*, by: *Farris E. Merritt*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Jake H. Jones*, Ass't Att'y Gen., for appellee.