

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR11-803

SCOTT DAVID ASHCRAFT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 12, 2012

APPEAL FROM THE GRANT  
COUNTY CIRCUIT COURT  
[NO. CR-10-53-2]

HONORABLE PHILLIP H.  
SHIRRON, JUDGE

MOTION TO WITHDRAW DENIED;  
REBRIEFING ORDERED

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## JOSEPHINE LINKER HART, Judge

Scott David Ashcraft was convicted in a Grant County jury trial of delivery of a controlled substance within 1000 feet of a church. He was sentenced to 216 months in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), Ashcraft's counsel has filed a motion to withdraw on grounds that the appeal is without merit. The clerk of this court furnished appellant with a copy of his counsel's brief and notified him of his right to file pro se points for reversal within thirty days. Ashcraft availed himself of the opportunity to submit pro se points. In his points, he asserts that the evidence was insufficient to establish that a drug transaction occurred; that the State's use of a "hunting tool" was inadequate to prove the proximity of the alleged transaction to a church; that he received ineffective assistance of counsel; and that the jury was not properly instructed



on sentencing guidelines. The State filed a responsive brief.<sup>1</sup>

The motion submitted by Ashcraft's counsel was accompanied by an abstract and a brief that purportedly addresses everything in the record that might arguably support an appeal. The brief, however, is deficient. Counsel's brief does not discuss all the adverse rulings; under the *Anders* format, the argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). If counsel fails to address all possible grounds for reversal, this court will deny the motion to withdraw and order rebriefing. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000). While appellate counsel has identified some of the adverse rulings, the one-and-a-half-page argument section is completely devoid of any analysis as to why it would be wholly frivolous to base an appeal on these adverse rulings. Moreover, appellate counsel has completely ignored the denial of Ashcraft's motion to have different counsel appointed for trial. Accordingly, we hold that the argument section of the brief is deficient. We therefore order Ashcraft's counsel to correct these deficiencies in a substituted brief. In ordering rebriefing, we do not preclude counsel from submitting a merit brief.

Motion to withdraw denied; rebriefing ordered.

GLADWIN and MARTIN, JJ., agree.

*Bob Frazier*, for appellant.

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

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<sup>1</sup>We note that, in its brief, the State has misrepresented the law concerning pro se points under the *Anders* format. Contrary to its assertions, appellant's failure to cite authority or make a full legal argument is not a bar to considering the issue on the merits. *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000). The State's citation of *Stewart v. State*, 2010 Ark. App. 584, a non-*Anders* case, does not compel a different result.