

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR11-704

WESLEY WILSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 10, 2012

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NO. CR-2001-599]

HONORABLE RANDY F.  
PHILHOURS, JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**ROBIN F. WYNNE, Judge**

Wesley Wilson appeals from the revocation of his suspended imposition of sentence. His counsel has filed a motion to withdraw and a brief in which he argues that there would be no merit to an appeal in this case. This court previously ordered that the case be rebriefed and denied counsel's motion to withdraw because appellant's counsel omitted the terms and conditions of appellant's suspended imposition of sentence from the addendum. *Wilson v. State*, 2012 Ark. App. 416. Counsel has corrected the deficiency, and we may now consider the appeal. We affirm the judgment of the trial court and grant counsel's motion to withdraw.

Wilson pled guilty to a charge of sale of cocaine on December 31, 2001, and received ten years' imprisonment with an additional ten years' suspended imposition of sentence. The conditions of his suspended imposition of sentence prohibited him from violating any state,

federal, or municipal law. In December 2010, the State filed a petition to revoke in which it alleged that Wilson violated the terms of his suspended imposition of sentence by (1) failing to pay his fines and costs; (2) failing to notify the local sheriff of his address and employment; and (3) committing new offenses of rape and theft of property.

At the revocation hearing, Shirley Wilson, Wilson's sister-in-law, testified that she was at her cousin's home drinking with friends on September 5, 2010. Wilson was also at the home. After Wilson and his girlfriend got into an argument, Shirley took Wilson to her house at her cousin's request. At one point during the night, Shirley vomited and went to the bathroom. After she returned from the bathroom, Wilson was in her bed, so she went to sleep on her couch. Sometime later, Shirley awoke to find that Wilson was performing oral sex on her. Shirley stated that she ran to her bathroom and called her ex-boyfriend for help. Shirley testified that she did not give Wilson permission to perform a sex act on her.

Stacy Allen with the West Memphis Police Department testified that she collected a sexual assault kit and Shirley's clothing while Shirley was at the hospital following the assault. When Officer Allen testified that a nurse told her that possible semen was found during Shirley's examination, Wilson objected to the testimony as violating the Confrontation Clause. The trial court overruled the objection. Wilson again objected to testimony from Officer Allen that the lab matched the DNA from the semen sample to Wilson. The trial court overruled the second objection.

Following the revocation hearing, the trial court revoked Wilson's suspended imposition of sentence based upon the court's finding that he had committed a new criminal

offense. The trial court stated in its oral ruling that it was basing the finding on Shirley's testimony. Wilson was sentenced to 180 months' imprisonment in a judgment and commitment order entered on April 6, 2011. This appeal followed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), counsel for appellant has filed a motion to withdraw accompanied by a brief in which he argues that there would be no merit to an appeal in the case. Such a brief must list and discuss all rulings adverse to appellant and explain why there would be no merit to an appeal. Ark. Sup. Ct. R. 4-3(k) (2011).

The only rulings during the revocation hearing that were adverse to Wilson were the trial court's denial of his objections to certain testimony on confrontation grounds and the trial court's decision to revoke his suspended imposition of sentence. Wilson's counsel states in his brief that any error committed by the trial court in denying his objections on confrontation grounds was harmless. We agree.

At the revocation hearing, Wilson objected to testimony from Officer Allen that semen had been collected from the victim and that the DNA from the sample matched his. In its oral ruling revoking Wilson's suspended imposition of sentence, the trial court stated that it relied upon Shirley's testimony, not the lab results, in revoking Wilson's suspended sentence. Wilson was not prejudiced by any error in the trial court's ruling, and a trial court's ruling on the admission of evidence will not be reversed absent a showing of prejudice, because appellate courts do not reverse for harmless error. *See Vanesch v. State*, 343 Ark. 381, 37 S.W.3d 196 (2001).

Wilson's counsel also states that there was sufficient evidence to support the trial court's decision to grant the revocation petition. We agree with counsel on this point as well. Shirley Wilson testified that Wilson committed a sexual act on her while she was asleep. A person commits sexual assault in the second degree if the person engages in sexual conduct with another person who is incapable of consent because he or she is physically helpless. Ark. Code Ann. § 5-14-125(a)(2)(A) (Repl. 2011). A person is physically helpless if that person is unconscious. Ark. Code Ann. § 5-14-101(7)(A) (Repl. 2011). This court has held that the testimony of a rape victim, standing alone, is sufficient to support a conviction. *See Clayton v. State*, 2012 Ark. App. 199. This is certainly the case with a revocation, which can be supported by evidence insufficient to support a criminal conviction. *See Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). Shirley's testimony establishes the elements of sexual assault in the second degree. One of the terms of Wilson's suspended sentence was that he not commit new criminal offenses. There was substantial evidence to support the revocation based on a violation of that requirement.

Wilson has submitted a pro se point for reversal. He asserts that the lab test concluding that the DNA collected from Shirley belonged to him was incorrect. As noted above, the trial court did not rely on the DNA results; instead, it relied upon Shirley's testimony, which was sufficient to establish a violation of a term of Wilson's suspended imposition of sentence. Wilson's pro se point lacks merit. We hold that counsel has complied with Rule 4-3(k). The judgment of the trial court is affirmed, and the motion to withdraw is granted.

Affirmed; motion to withdraw granted.

GRUBER and GLOVER, JJ., agree.

*C. Brian Williams*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.