

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-1256

CHARLES EDWARD CANNON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 16, 2013

APPEAL FROM THE HOWARD
COUNTY CIRCUIT COURT
[CR-2007-139-2]

HONORABLE TOM COOPER,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

DAVID M. GLOVER, Judge

On August 12, 2009, Charles Cannon was sentenced to ten years' probation after pleading guilty to the offense of felony nonsupport. He was also ordered to pay costs, fines, and \$18,861.53 in back child support. On December 1, 2010, the State filed a petition to revoke, alleging that Cannon had violated the conditions of his probation. Following an August 17, 2011 hearing, the trial court revoked Cannon's probation and sentenced him to ten years' imprisonment in the Arkansas Department of Correction. The judgment and commitment order was entered on August 25, 2011, and this appeal followed. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, Cannon's attorney has filed a motion to withdraw as counsel on the ground that the appeal is wholly without merit.



Cite as 2013 Ark. App. 10

The motion is accompanied by an abstract, brief, and addendum referring to everything in the record that was decided adversely to Cannon, and a statement of reasons why none of those rulings would be a meritorious ground for reversal. The clerk of this court furnished Cannon with a copy of his counsel's brief and notified him of his right to file a *pro se* statement of points for reversal within thirty days, but he has not done so.

There were two adverse rulings related to the revocation of probation during the August 17, 2011 revocation hearing: 1) an evidentiary ruling, sustaining the State's objection to Cannon's attempt to testify about a letter that was allegedly sent to Cannon's parole officer, and 2) the revocation of probation itself.

Cannon was on probation in Howard County from his guilty plea regarding felony nonsupport—the underlying offense associated with this appeal; he was on parole in Pulaski County for third-degree domestic battery. The letter at issue was supposedly sent to Cannon's Pulaski County parole officer by the Quality Living Center, where Cannon was receiving treatment. The Howard County prosecutor objected, maintaining that the letter itself was not before him and he had no knowledge of it. In responding to the objection, Cannon's counsel stated, "I believe he can testify if one was sent. And again, it goes to the credibility. At least that's his belief and his understanding at the time." Our rules of evidence are not applicable in revocation proceedings, Ark. R. Evid. 1101 (b)(3), and, even if they were, we would find no abuse of the trial court's discretion in sustaining the State's objection, particularly in light of the fact that the letter allegedly went to a Pulaski County parole officer, not to the Howard County probation officer. Moreover, as



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also noted by Cannon’s counsel, even if this court were to find such an abuse, it would be harmless because Cannon referenced the letter, with no objection, before his remark about it that raised the State’s objection.

With respect to the revocation itself, Lois White, who testified that she had been employed with the Howard County Office of Arkansas DCC Probation and Parole for sixteen years, explained that Cannon was ordered to report to her office for his intake interview after pleading guilty to felony nonsupport on August 12, 2009, but failed to do so. She said that his appointment was rescheduled twice; however, he did not report either time. She also explained that he had failed to pay any of his court-ordered financial obligations. She testified that, as a result, the petition to revoke his probation for failure to pay and failure to report to intake was filed. She also explained that Cannon “has an active parole revocation out of Pulaski County for failure to report to the parole office up there.”

Cannon acknowledged he was aware that he was placed on probation in August 2009 and that he was to report to the probation officer to complete his intake. He also acknowledged the intake appointments and his failure to appear but claimed that he informed the probation office in Howard County of his transportation issues. He stated that to his knowledge all of his Howard County business was transferred to Pulaski County, “as he had requested.”



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Ms. White was recalled and testified that she corresponded via e-mail with Cannon's Pulaski County parole officer in December 2009; that she informed the parole officer she was trying to make contact with Cannon to fill out the necessary probation-transfer paperwork; that she could not complete the transfer until Cannon completed his intake interview; that the parole officer told her he would relay the message to Cannon during their next office visit, "assuming [Cannon] reported"; and that on April 2, 2010, she received an e-mail from the parole officer indicating that Cannon had absconded supervision.

At the conclusion of the hearing, the trial judge specifically told Cannon that he did not believe him; that Cannon had an excuse for everything; and that he did not understand how Cannon thought he wouldn't have to meet with the probation department in Howard County at least one time. The judge further said that he did not believe Cannon when he said he thought his probation had been transferred to Pulaski County; there was testimony that he was not even meeting with his Pulaski County parole officer. The trial court found that Cannon had violated the terms and conditions of his probation, specifically by not meeting with his probation officer, and sentenced him to serve ten years in the Arkansas Department of Correction. The violation of one condition is sufficient to support a revocation. *Graydon v. State*, 2012 Ark. App. 587. Cannon's failure to report is sufficient by itself to support his revocation, and his excuses for not doing so were not believed by the trial court.



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From our review of the record and the brief submitted by Cannon's counsel, we find that there has been compliance with Rule 4-3(k) and that the appeal is wholly without merit. Accordingly, counsel's motion to withdraw is granted, and the revocation of Cannon's probation is affirmed.

Affirmed; motion to withdraw granted.

GLADWIN, C.J., and VAUGHT, J., agree.

Jason Horton Law Firm, by: *Jason Horton*, for appellant.

No response.