

## ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR12-532

CARL JOSEPH COOPER  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** January 16, 2013

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NOS. CR11-14-4, CR11-300-4]

HONORABLE MARCIA R.  
HEARNSBERGER, JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

**ROBIN F. WYNNE, Judge**

Appellant Carl Joseph Cooper pled guilty to two counts of fourth-degree sexual assault, a Class D felony, and was sentenced by a jury to consecutive six-year terms of imprisonment and fined \$10,000. The victim was Cooper's fourteen-year-old niece (his sister's stepdaughter), who had a baby as a result. Cooper's attorney has filed a motion to withdraw and a brief 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 (2012), arguing that an appeal in this case is wholly without merit. We affirm the sentence and grant the motion.

An *Anders* brief must refer to everything in the record that might arguably support an appeal, including all motions, objections, and requests decided adversely to appellant, and a statement of reasons why none of those rulings would be a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1); *Green v. State*, 2009 Ark. App. 519, at 2, 334 S.W.3d 418, 418.

Generally, there is no right to appeal a guilty plea, except for a conditional plea of guilty premised on an appeal of the denial of a suppression motion pursuant to Arkansas Rule of Criminal Procedure 24.3. *Seibs v. State*, 357 Ark. 331, 334, 166 S.W.3d 16, 17 (2004). Another exception exists when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself. *Id.* (citing *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003)). The second exception is applicable in the present case.

There were two evidentiary rulings adverse to Cooper in this case: the grant of the State's motion in limine to prohibit any reference to the victim's sexual history and the grant of the State's motion in limine to prohibit any evidence of plea offers or sentences in similar cases. Evidence of a victim's prior sexual conduct is inadmissible at trial except where the court, after holding an in camera hearing, makes a written determination that such evidence is relevant to a fact in issue and that its probative value outweighs its inflammatory or prejudicial nature. Ark. Code Ann. § 16-42-101 (Repl. 1999). When consent is not an issue, whether the victim had sexual relations with another person is "entirely collateral." *M.M. v. State*, 350 Ark. 328, 333, 88 S.W.3d 406, 409 (2002). Thus, the trial court's ruling was not an abuse of discretion.

As for the State's other motion in limine, Arkansas Code Annotated section 16-97-103 (Repl. 2006) provides a nonexhaustive list of evidence relevant to sentencing; it does not include comparative sentence analysis. In *Colvin v. Committee on Professional Conduct*, 309 Ark. 592, 832 S.W.2d 246 (1992), the appellant argued that the sanctions made public and published in the larger state newspapers and the *Arkansas Bar Journal* should be considered as precedent and applied to his case. The court rejected that argument for several

reasons, writing that “even if the statistics were valid, we have stated in the context of criminal law that we will not reduce or compare sentences that are imposed within statutory limits.” *Colvin, supra* (citing *Dunlap v. State*, 303 Ark. 222, 795 S.W.2d 920 (1990)). Here, appellant was sentenced within the statutory range for a Class D felony, and we agree with Cooper’s counsel that there is no nonfrivolous argument for reversal.

Cooper’s counsel has complied with the requirements of Rule 4-3, and we agree that there are no meritorious grounds for reversal in this case.

Affirmed; motion to withdraw granted.

PITTMAN and BROWN, JJ., agree.

*Montgomery, Adams & Wyatt, PLC*, by: *Dale E. Adams*, for appellant.

No response.