

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-20

TERRY DOUGLAS REED
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 16, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT [Nos. CF-
2006-58, CR-2008-74]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

REBRIEFING ORDERED;
MOTION TO WITHDRAW
DENIED

LARRY D. VAUGHT, Judge

This is an appeal from a judgment and commitment order entered on December 8, 2011, by the Sebastian County Circuit Court upon the revocation of the suspended imposition of sentence of Terry Douglas Reed. Upon revocation, the trial court sentenced Reed to twelve years' imprisonment and a suspended sentence of seven years. Reed'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 Arkansas Supreme Court Rule 4-3(k)(1) (2012), asserting that an appeal would be wholly frivolous and that this case should be affirmed. Reed has exercised his right to file pro se points for reversal, arguing that the trial court's sentence is illegal. The State has filed a response brief to Reed's pro se points. We conclude that counsel's no-merit brief is not in compliance with *Anders* and Rule 4-3(k); therefore, we order rebriefing.



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The record reveals that on March 14, 2006, Reed entered a guilty plea to possession of methamphetamine (a Class C felony) and was sentenced by the trial court to imprisonment for one year with a nine-year suspended imposition of sentence. He was paroled on July 14, 2006.

On December 11, 2007, the State filed a petition to revoke Reed's suspended sentence alleging that on December 6, 2007, he committed the offenses of possession of marijuana (a Class D felony) and possession of drug paraphernalia (a Class C felony). On February 5, 2008, a judgment and commitment order was entered wherein Reed pled guilty to prior charges of possession of marijuana and two counts of possession of methamphetamine and to new charges of possession of marijuana and possession of drug paraphernalia. He was sentenced to two years' imprisonment plus a four-year suspended sentence on each of the marijuana convictions, two years' imprisonment plus an eight-year suspended sentence on each of the methamphetamine convictions, and two years' imprisonment plus an eight-year suspended sentence on the drug-paraphernalia conviction—all terms to run concurrently. Reed was released from prison on October 22, 2008.

On October 13, 2011, the State filed a petition to revoke Reed's suspended sentence based on allegations that Reed committed new offenses on October 7, 2011—possession of methamphetamine and possession of drug paraphernalia. A revocation hearing was held on November 30, 2011. At the beginning of the hearing, Reed's public defender moved for a one-to two-week continuance so that Reed could retain a private attorney. The trial court denied the motion.



At the hearing, the first of two witnesses, Daniel Kasper of the Fort Smith Police Department, testified that on October 7, 2011, he stopped Reed for failing to signal a turn. During the stop, Officer Kasper noticed Reed trying to hide something in his pocket. The officer performed a pat-down search of Reed and found a baggie with methamphetamine residue in it.¹ Officer Kasper arrested Reed and transported him to jail. According to the officer, on the way to jail Reed said that he had a glass drug-smoking pipe in his pants. The second witness was Reed. He admitted that he had been smoking methamphetamine for fifteen years, that it had become a problem in his life, and that he wanted help. The trial court revoked Reed's suspended sentence and sentenced him to twelve years' imprisonment with an additional seven-year suspended sentence. Before concluding the hearing, the trial court denied Reed's motion for bond. Reed's counsel's no-merit appeal and motion to withdraw as counsel followed.

In the context of no-merit appeals, in furtherance of the goal of protecting a defendant's 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. *Wakeley v. State*, 2012 Ark. App. 448, at 1–3 (citing *Walton v. State*, 94 Ark. App. 229, 231, 228 S.W.3d 524, 526 (2006)). Further, counsel's no-merit brief must contain an argument section that consists of a discussion of all rulings adverse to the defendant made by the trial court on all objections, motions, and requests with an explanation as to why each

¹The State Crime Laboratory report confirmed that the residue in the baggie was methamphetamine.



adverse ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1). Our precedent requires full compliance with the rule. *Boen v. State*, 2009 Ark. App. 535, at 2, 336 S.W.3d 883, 883 (citing *Brady v. State*, 346 Ark. 298, 302, 57 S.W.3d 691, 694 (2001); *Brown v. State*, 85 Ark. App. 382, 393–94, 155 S.W.3d 22, 29 (2004)).

Reed’s counsel’s no-merit brief addresses the sufficiency of the evidence supporting the revocation of Reed’s suspended sentence and also includes the argument that the trial court’s sentence is not illegal as claimed by Reed in his pro se point. Further, Reed’s counsel correctly states that there were no adverse evidentiary rulings during the revocation hearing. However, there were two other adverse rulings that Reed’s counsel abstracted but did not discuss in the no-merit brief. The first occurred when the trial court denied Reed’s counsel’s motion for continuance. The second occurred post-sentencing when the trial court denied Reed’s counsel’s request for bond. Arguments as to why these adverse rulings on motions made by Reed’s counsel are not meritorious grounds for reversal should have been included in the no-merit brief. *Boen*, 2009 Ark. App. 535, at 2, 336 S.W.3d at 883 (rebriefing ordered where a no-merit brief did not address trial court’s post-sentencing ruling refusing to allow the initial bond of \$10,000 to stand and instead setting the appeal bond at \$50,000); *Dewberry v. State*, 341 Ark. 170, 171–72, 15 S.W.3d 671, 671–72 (2000) (rebriefing ordered where the defendant’s counsel’s no-merit brief failed to discuss the trial court’s adverse rulings to deny defendant’s motions for continuance and for self-representation).

Because of these omissions, the no-merit brief filed herein does not comply with *Anders* and Ark. Sup. Ct. R. 4-3(k). Accordingly, we remand and order Reed’s attorney to



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file a new brief that addresses these adverse rulings within thirty days. When the brief is filed, the motion and brief will be forwarded by the clerk to Reed so that he may raise (within thirty days) any points he chooses in accordance with Ark. Sup. Ct. R. 4-3(k)(2).

Rebriefing ordered; motion to withdraw denied.

GLADWIN, C.J., and GLOVER, J., agree.

Lesley Freeman Burlison, for appellant.

Dustin McDaniel, Att’y Gen., by: *Christian Harris*, Ass’t Att’y Gen., for appellee.