

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR12-99

BRANDON MICHAEL DAVIS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered January 16, 2013

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. CR-11-12-1]

HONORABLE ROBIN F. GREEN,  
JUDGE

APPEAL DISMISSED; MOTION TO  
WITHDRAW GRANTED

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## WAYMOND M. BROWN, Judge

On October 17, 2011, appellant Brandon Davis pled guilty to rape, a Class Y felony, and was sentenced to twenty-five years' imprisonment with an additional ten-year suspended imposition of sentence. He filed a timely notice of appeal from the October 24, 2011 judgment and commitment order. Pursuant to *Anders v. California*,<sup>1</sup> and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, Davis's counsel has filed a motion to withdraw on the ground that an appeal in this matter would be wholly without merit. Counsel specifically states that Davis's appeal must be dismissed because this court lacks jurisdiction. Davis was provided with a copy of his counsel's brief and was notified of his

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<sup>1</sup>386 U.S. 738 (1967).



right to file a list of points on appeal within thirty days. He has not raised any pro se points for reversal. We dismiss the appeal and grant counsel's motion to withdraw.

We agree with counsel that the appeal is without merit because Davis is not permitted to bring an appeal. Except as provided in Arkansas Rule of Criminal Procedure 24.3(b), one cannot take an appeal from a guilty plea or a plea of nolo contendere.<sup>2</sup> Under Rule 24.3(b), a defendant may enter a conditional plea of guilty premised on an appeal of the denial of a suppression motion.

The supreme court has recognized a few exceptions to this general rule. The first exception is when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself.<sup>3</sup> The second exception is when the appeal is an appeal of a posttrial motion challenging the validity and legality of the sentence itself.<sup>4</sup> In *Jones v. State*,<sup>5</sup> the supreme court permitted an appeal from the trial court's failure to modify the appellant's sentence by applying jail-time credit.<sup>6</sup> None of these exceptions apply to Davis. Accordingly, Davis's appeal is dismissed, and the motion to withdraw is granted.

Appeal dismissed; motion to withdraw granted.

PITTMAN and WYNNE, JJ., agree.

*Chrestman Group, PLLC*, by: *Keith L. Chrestman*, for appellant.

No response.

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<sup>2</sup>See Ark. R. App. P.–Crim. 1(a) (2011).

<sup>3</sup>*Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004); *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003).

<sup>4</sup>*Seibs, supra*; *Hill v. State*, 318 Ark. 408, 887 S.W.2d 275 (1994).

<sup>5</sup>301 Ark. 510, 785 S.W.2d 217 (1990).

<sup>6</sup>See also *Hampton v. State*, 48 Ark. App. 93, 890 S.W.2d 279 (1995).