

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR12-584

BRANDON CLARK FRITTS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 23, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
GREENWOOD DISTRICT
[CR-2007-14G]

HONORABLE JAMES O. COX, JUDGE

REBRIEFING ORDERED; MOTION
DENIED

DAVID M. GLOVER, Judge

On August 13, 2007, Brandon Fritts pleaded guilty to battery in the first degree and being a felon in possession of a firearm, both Class B felonies. He was sentenced to a total of ten years' incarceration, to be followed by an additional ten years' suspended imposition of sentence, conditioned upon good behavior. On January 5, 2012, the State filed a petition to revoke Fritts's suspended sentence, alleging that he had violated the terms of his suspended sentence by associating with known felons or persons of bad character between October 1, 2011, and January 4, 2012. On February 9, 2012, the State filed an amended petition for revocation, alleging further that on December 20, 2011, Fritts had committed three counts of residential burglary; on January 3, 2012, he had committed first-degree murder and the offense of being a felon in possession of a firearm; and on January 25, 2012, he had been arrested in Oklahoma for endeavoring to manufacture



methamphetamine. Both of these petitions for revocation referenced only the guilty plea to the first-degree battery offense, not the offense of being a felon in possession of a firearm.

On May 30, 2012, a hearing on the petition to revoke was held, at which time the State presented testimony from Fort Smith police officers regarding the murder of Jamie Czeck. This testimony revealed that Fritts had admitted to the officers that he had in fact shot Czeck seven or eight times; that no one else was involved; and that he had shot Czeck twice in the head because the last time he had shot someone in the head, it had not worked out the way he had intended. When asked why he had shot Czeck, Fritts told officers that Czeck would not shut up and had “pi**ed” him off. There was also testimony from the three persons whose residences had been burglarized on December 20, 2011, in Sebastian County, and from which money, guns, and electronics were stolen. Kevin Nickson, an employee with the Sebastian County Sheriff’s Office, testified that Fritts admitted to him that he had committed those burglaries because someone had upset him, and he was looking for a gun to kill that person. The gun used to murder Czeck was ultimately determined to have been one of the guns stolen in those residential burglaries.

At the close of the May 30 revocation hearing, the trial court found that Fritts had violated the terms of his suspended sentence, revoked his sentence, and sentenced Fritts to ten years in the Arkansas Department of Correction. However, later that afternoon, the State informed the trial court that Fritts had pleaded guilty to not only first-degree battery, as had been alleged in the petition for revocation, but also to being a felon in possession of



a firearm, and therefore his exposure was not just ten years, as alleged at the revocation hearing for first-degree battery, but rather twenty years—ten years for each offense. Fritts’s counsel objected, arguing that only the battery charge was before the court, not the felon-in-possession charge. Fritts’s counsel also argued that jeopardy had attached because the trial court had sentenced Fritts to ten years in prison. The State argued that both charges arose under the same case number and since the petition had been filed in the matter, the trial court could consider both counts. The trial court stated that it would take the matter under advisement and decide whether to amend the sentence.

On June 1, 2012, the State filed a second amended petition to revoke, alleging the same reasons for revocation, but adding that on August 10, 2007, Fritts had pleaded guilty not only to battery in the first degree, but also to felon in possession of a firearm, both Class B felonies, for which he was sentenced to ten years’ imprisonment with an additional ten years’ suspended imposition of sentence for each charge, with the sentences to run concurrently. On June 5, 2012, the trial court held that because a judgment had not yet been entered, it retained jurisdiction and that prior to a sentence being executed, it could amend any findings made. The trial court then accepted the State’s second amended petition and upon revocation sentenced Fritts to a total of twenty years in prison (ten years on each count, to run consecutively), stating that had it known that Fritts was exposed to twenty years, it would have originally sentenced him to twenty years.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, Fritts’s counsel has filed a



motion to withdraw on the grounds that the appeal is wholly without merit. Counsel's motion was accompanied by a brief allegedly referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to appellant made by the trial court on all objections, motions, and requests made by either party, with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished Fritts with a copy of his counsel's brief and notified him of his right to file pro se points; Fritts has not filed points.

We order rebriefing because counsel has failed to discuss the sufficiency of the evidence to support the revocation of Fritts's suspended sentence in the brief. The revocation of Fritts's suspended sentence is clearly an adverse ruling that must be discussed in an *Anders* brief. For this reason, we deny counsel's motion to withdraw and order for rebriefing.

Rebriefing ordered; motion denied.

WALMSLEY and WHITEAKER, JJ., agree.

Wallace, Martin, Duke & Russell, PLLC, by: *Sheri L. Latimer*, for appellant.

No response.