

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-779

D.S., MINOR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 27, 2013

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. J 2011-825-D]

HONORABLE MARK THOMPSON
FRYAUF, JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

RITA W. GRUBER, Judge

The State filed a petition alleging that D.S., a minor, should be adjudged a juvenile delinquent for committing the elements of the offense of rape. After a bench trial, the circuit court adjudicated him delinquent and committed him to the Arkansas Division of Youth Services. 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, counsel for D.S. has filed a motion to be relieved as counsel and a brief stating that the adverse rulings in the record provide no meritorious grounds for an appeal.

Counsel states that “no objections” were raised and that the only apparent issue is the sufficiency of the evidence to adjudicate D.S. delinquent. Our review of the record, however, reveals that the circuit court not only denied D.S.’s motions for a directed verdict but also sustained the State’s hearsay objections on several occasions. The argument section



of a no-merit brief “consists of a list of *all rulings adverse to the defendant . . . 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.” Ark. Sup. Ct. R. 4-3(k)(1) (2012) (emphasis added). The rule requires that the abstract and addendum of a no-merit brief contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court. *Id.*

A no-merit brief that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(k)(1) and must be rebriefed. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. We order counsel to cure deficiencies under Rule 4-3(k)(1) by filing a substituted brief, abstract, and addendum within fifteen days from the date of this opinion. Ark. Sup. Ct. R. 4-2(b)(3) (2012). Upon the filing of such a substituted brief by the appellant, the State will be afforded an opportunity to revise or supplement its brief in the time prescribed by the clerk. *Id.*

The deficiencies we have noted are not to be taken as an exhaustive list. We encourage counsel, prior to filing a substituted brief, to examine Rules 4-2 and 4-3 to ensure that he has complied with our rules and that no additional deficiencies are present. *Wells v. State*, 2012 Ark. App. 151. If, after the opportunity to cure the deficiencies, counsel fails to file a complying abstract, brief, and addendum within the prescribed time, the judgment may be affirmed for noncompliance with the rules. *Id.*

Motion to withdraw denied; rebriefing ordered.

PITTMAN and WHITEAKER, JJ., agree.

Ballard & Ballard, P.A., by: *Andrew D. Ballard*, for appellant.

No response.