

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-12-963

EDWARD EMERSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 22, 2013

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23CR-2011-1059]

HONORABLE DAVID L.
REYNOLDS, JUDGE

REMANDED TO SETTLE THE
RECORD; REBRIEFING ORDERED

DAVID M. GLOVER, Judge

In April 2012 after a bench trial, Edward Emerson was convicted of aggravated assault on a family or household member and terroristic threatening in the first degree. He was sentenced to ten years' imprisonment for each offense, with the sentences to be served concurrently. After finding him guilty of those offenses, the trial court also revoked Emerson's suspended sentences in two 2003 cases and sentenced him to three years' imprisonment for each offense, with those sentences to each run consecutively to the ten-year concurrent sentences.

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, Emerson's counsel has filed a motion to withdraw on the grounds that the appeal is wholly without merit. His counsel's



motion was accompanied by a brief purportedly including everything in the record that might arguably support an appeal, including a list of all rulings adverse to Emerson 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 our court furnished Emerson with a copy of his counsel's brief and notified him of his right to file pro se points; Emerson has not filed any points.

We must remand this case both to settle the record and for rebriefing. Although the revocation of Emerson's suspended sentences was discussed during the bench trial and the trial court stated that it was revoking Emerson's suspended sentences, the order in the addendum indicates only that Emerson was convicted of domestic abuse of a family or household member and first-degree terroristic threatening. There is no order revoking the suspended sentences in either the addendum or the record. Therefore, we must remand to settle the record on this issue.

Furthermore, there is no petition from the State to revoke Emerson's suspended sentences in either the addendum or the record. We cannot tell if a revocation petition was even filed or, if filed, if it was timely. Likewise, the motion and order extending time to file the record are also not included in the addendum.

Finally, while counsel notes in the abstract that a hearsay objection occurred during the introduction of State's Exhibit 2, there is no explanation or colloquy regarding the objection. The abstract does not indicate what the State's exhibit was or why Emerson's counsel was objecting to it. Then, in discussing the adverse rulings in her brief, counsel



Cite as 2013 Ark. App. 340

should cite the standard of review employed in the revocation of suspended sentences and provide a more complete discussion of why the hearsay objection did not provide a meritorious basis for reversal.

Due to these deficiencies, we deny counsel's motion to withdraw, and we remand both to settle the record and for rebriefing. We bring to counsel's attention that the deficiencies set forth in this opinion are not considered to be an exhaustive list; counsel is encouraged to review *Anders* and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals for the requirements of a no-merit brief.

Remanded to settle the record; rebriefing ordered.

GRUBER and VAUGHT, JJ., agree.

Lorie L. Mason, for appellant.

No response.