

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-12-404

MICHAEL DEWAYNE COPELAND
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 5, 2013

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. CR-2010-63-3]

HONORABLE EDWIN KEATON,
JUDGE

MOTION TO WITHDRAW DENIED
WITHOUT PREJUDICE;
REMANDED FOR THE RECORD
TO BE SETTLED AND
SUPPLEMENTED; REBRIEFING
ORDERED

JOHN MAUZY PITTMAN, Judge

Appellant was convicted of attempted first-degree murder and first-degree battery and was sentenced to two concurrent terms of thirty years' imprisonment. His attorney filed a motion to be relieved pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k), asserting that the appeal was wholly without merit. In an opinion issued on January 16, 2013, we denied the motion without prejudice and directed counsel to file a substituted abstract, brief, and addendum conforming to the abstracting requirements of Ark. Sup. Ct. R. 4-2. *Copeland v. State*, 2013 Ark. App. 6. Appellant has filed a substituted abstract, brief, and addendum, but the filing does not conform to the requirements of either Rule 4-2 or Rule 4-3(k).



Rule 4-3(k)(1) provides that:

Any motion by counsel for a defendant in a criminal or a juvenile delinquency case for permission to withdraw made after notice of appeal has been given shall be addressed to the Court, shall contain a statement of the reason for the request and shall be served upon the defendant personally by first-class mail. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief including an abstract and Addendum. The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit 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 abstract and Addendum of the brief shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court.

Even a minor omission in an *Anders* brief necessitates rebriefing. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. Here, counsel's brief fails to comply with Rule 4-3(k)(1) in at least three respects: all of the objections resulting in adverse rulings have not been listed, all of the objections have not been discussed, and no satisfactory explanation has been submitted as to why it would be frivolous to argue that the trial court erred in overruling appellant's double-jeopardy argument. Specifically, counsel failed to list an adverse ruling, found on page 318 of the record, to appellant's objection to the State's request to delay the proceeding midtrial to obtain the presence of two witnesses who were under subpoena but had not appeared. In addition, counsel abstracted, but did not discuss, an adverse ruling on appellant's objection to the admission of State's Exhibit 12 into evidence. This objection appears on page 81 of the abstract but is not discussed in counsel's argument. With regard to the double-jeopardy issue, appellant argued below that his conviction for both attempted first-degree murder and first-degree battery violated double jeopardy. Counsel argues that this would not be a meritorious ground for reversal by analogy to authority relating to the offense



of committing a terroristic act. However, counsel's argument is not sufficiently developed in the brief to allow us to conclude that it would be frivolous to advance this argument on appeal.

Finally, counsel's substituted brief has disclosed an irregularity in the record that will require remand. As noted in our prior opinion, appellant made a recorded statement to police that was played at trial. Counsel's latest brief informs us that this statement was not abstracted originally because it was not transcribed by the court reporter. However, our inspection of the record shows that there was, at trial, no waiver of the reporting requirement by the parties. In the absence of such a waiver, Arkansas Supreme Court Administrative Order No. 4(a) imposes upon the circuit court the duty to require that a verbatim record be made of all proceedings pertaining to any contested matter before the court or the jury. Consequently, we remand for the trial court to settle the record by requiring that a verbatim transcription of the recording that was played at trial be made and that the record be supplemented by the addition of that transcription within thirty days of this opinion. See *Patton v. State*, 2013 Ark. App. 131; *Dillard v. State*, 2012 Ark. App. 503. Counsel must then include in his substituted abstract, brief, and addendum an abstract of the transcribed statement.

We note that the list of deficiencies in counsel's brief mentioned here is not necessarily an exhaustive one. We encourage appellant's attorney to review our rules prior to filing the substituted abstract, brief, and addendum and to rectify any deficiencies or inaccuracies in addition to those that we have mentioned specifically.



Cite as 2013 Ark. App. 369

Motion to withdraw denied without prejudice; case remanded for the record to be settled and supplemented; rebriefing ordered.

WALMSLEY and WOOD, JJ., agree.

Steven R. Davis, for appellant.

No response.