

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-13-64

JOSEPH ASHLEY MAX

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 26, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-12-291]

HONORABLE RALPH WILSON, JR.,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED
WITHOUT PREJUDICE

ROBIN F. WYNNE, Judge

Joseph Ashley Max appeals from the trial court's revocation of his probation. His counsel has filed a motion to withdraw and no-merit brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)¹ of the Rules of the Arkansas Supreme Court and Court of Appeals in which he asserts that the appeal is wholly without merit. Because counsel failed to abstract and discuss at least one ruling at the revocation hearing that was adverse to appellant, we deny the motion to withdraw without prejudice and order rebriefing.

In April 2012, appellant pled guilty to charges of residential burglary and criminal mischief in the first degree. He was sentenced to 120 months' probation on the charge of

¹Counsel's motion to withdraw improperly cites Rule 4-3(j). The appropriate subsection is now 4-3(k).

residential burglary and sixty months' probation on the charge of criminal mischief in the first degree. On August 23, 2012, the State filed a petition to revoke appellant's probation. Following a hearing on the State's petition, the trial court revoked appellant's probation, finding that he had violated the terms and conditions of his probation. Appellant was sentenced to sixty months' imprisonment. This timely appeal followed.

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief that contains a list of all rulings adverse to appellant and an explanation as to why each ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1) (2012). Counsel has failed to abstract at least one ruling at the revocation hearing that was adverse to appellant. During the sentencing arguments, appellant objected to references to sex-offender registration by the State. The trial court overruled appellant's objection. This adverse ruling is neither abstracted nor discussed in the argument section of the *Anders* brief filed by counsel. Our supreme court has held that the failure to abstract and discuss any adverse ruling in an *Anders* brief necessitates rebriefing. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. Accordingly, we deny the motion to withdraw as counsel without prejudice and direct counsel to submit a substituted abstract and brief correcting this as well as any other deficiencies within fifteen days from the date of this opinion. We encourage counsel to review our rules prior to submitting the substituted abstract and brief.

Rebriefing ordered; motion to withdraw denied without prejudice.

PITTMAN and GRUBER, JJ., agree.

C. Brian Williams, for appellant.

No response.