

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-13-65

REGINALD EUGENE ALLS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 26, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-08-1142]

HONORABLE RALPH WILSON, JR.,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED

KENNETH S. HIXSON, Judge

Appellant Reginald E. Alls pled guilty on July 2, 2009, to possession of a controlled substance, Class C felony, and was sentenced to thirty-six months' supervised probation. On January 5, 2010, the State filed a petition to revoke his probation. After a hearing on September 9, 2010, his probation was extended. On June 25, 2012, the State filed another petition to revoke his probation, and after a hearing on November 1, 2012, he was found to have violated the terms and conditions of his probation by a preponderance of the evidence. Mr. Alls was sentenced to thirty-six months in the Arkansas Department of Correction.

As allowed by Rule 4-3 of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed what is characterized as a no-merit appeal and a motion asking to be relieved as counsel. Mr. Alls has not filed points for reversal despite being

notified by the clerk of our court that he had thirty days to do so. We deny counsel's motion and order rebriefing.

In this case, testimony was presented that appellant had not paid his fines and court costs as required by the terms and conditions of his probation. Testimony was also presented that he had failed to report as directed by his probation officer and as set forth in the terms and conditions of his probation. His probation officer testified that he had sent appellant several warning letters and had tried to contact him by telephone, but that appellant had not responded. He also had not paid his monthly probation fees as set forth in the terms and conditions of his probation.

We have explained in previous opinions that counsel must follow the appropriate procedure in a no-merit appeal because its "framework" ensures that defendants are afforded their constitutional rights. *Williams v. State*, 2013 Ark. App. 323. We order rebriefing in the present case because the argument portion of the brief submitted by counsel does not meet the requirements of Rule 4-3(k) or *Anders v. California*, 386 U.S. 738 (1967), for a no-merit appeal.

The brief accompanying an attorney's request to withdraw from appellate representation on the ground that the appeal is wholly without merit must contain a list of all rulings adverse to the defendant made by the trial court and an explanation as to why each adverse ruling does not constitute a meritorious ground for reversal. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The decision to revoke is an adverse ruling that must be addressed by counsel in an *Anders* brief. *Williams, supra*.

In the present case, there was one adverse evidentiary ruling, and the other ruling adverse to appellant was the trial court's decision to revoke probation. Counsel abstracted the adverse evidentiary objection and stated that the trial court's ruling on the issue was correct. Although the argument section of the brief fairly summarizes testimony about appellant's probation violations, it fails to discuss or explain why the revocation decision does not constitute a meritorious ground for reversal. See Ark. Sup. Ct. R. 4-3(k)(1). Counsel's argument does not reference Rule 4-3 or *Anders, supra*, and it merely concludes that because appellant did not provide a reasonable excuse for violating his conditions, the lower court should be affirmed. Although appellant's counsel's motion to withdraw does state that the appeal is "wholly without merit," it cites Rule 4-3(j), which governs the preparation of briefs for indigent appellants.

In deciding whether to allow counsel to withdraw from appellate representation, the test is not whether counsel thinks the trial court committed no reversible error, but whether the points to be raised on appeal would be wholly frivolous. *Williams, supra*. We conclude that appellant's counsel's brief fails to comply with Rule 4-3(k), and we order counsel to submit a complying no-merit brief within thirty days from the date of this opinion. We urge counsel to carefully examine the record and to review the rules before resubmitting a no-merit brief. See *Jefferson v. State*, 2013 Ark. App. 325.

Rebriefing ordered; motion to withdraw denied.

WHITEAKER and VAUGHT, JJ., agree.

C. Brian Williams, for appellant.

No response.