

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-13-228

GREGORY COHEN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 26, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-11-237]

HONORABLE RANDY F.
PHILHOURS, JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED

KENNETH S. HIXSON, Judge

Appellant Gregory Cohen pleaded guilty to first-degree terroristic threatening, and on March 28, 2011, he was placed on four years' probation. On August 6, 2012, the State filed a petition to revoke Mr. Cohen's probation, alleging multiple violations including failure to pay fines and probation fees, failure to report to probation as directed, and failure to notify the sheriff or probation office of his current address. After a hearing, the trial court entered an order on January 3, 2013, revoking appellant's probation and sentencing him to two years in prison followed by a three-year suspended imposition of sentence.

As permitted by Rule 4-3 of the Arkansas Rules of the 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. Cohen was provided with a copy of his counsel's brief

and notified of his right to file a list of pro se points within thirty days, but he has declined to file any points. We deny counsel's motion and order rebriefing.

At the revocation hearing held on December 18, 2012, there was testimony that Mr. Cohen had been incarcerated in Missouri but was paroled on January 30, 2012. His Arkansas probation officer, Mary Marshall, testified that Mr. Cohen reported for his initial intake on February 23, 2012, but reported to her for the last time in April 2012. Ms. Marshall stated that she tried to call Mr. Cohen in May 2012 but got no answer, that she sent him a letter in June 2012 advising him to report, and that she went to his house in July 2012 and spoke with Mr. Cohen's father, who advised her that he no longer lived there. In addition to failing to report, Mr. Cohen never paid his \$25 monthly probation fee. A ledger was admitted into evidence showing that Mr. Cohen had also been ordered to pay \$1320 in fines and costs at a rate of \$50 per month but that he had made no payments.

Mr. Cohen testified on his own behalf and stated that he had moved from his father's house to his mother's house. Mr. Cohen stated that he did not have a job and had no money to pay, so he decided to quit visiting his probation officer. Based on this evidence, the trial court found that Mr. Cohen violated his conditions and revoked 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 Mr. Cohen's 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.

In the present case, the sole ruling adverse to the appellant was the decision to revoke his probation. A no-merit brief shall contain a list of all rulings adverse to the defendant, with an explanation as to why each adverse ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1). Although the argument section of appellant's brief fairly summarizes the testimony about Mr. Cohen's violations of his conditions of probation, there is no discussion or explanation as to why this adverse ruling does not constitute a meritorious ground for reversal as required by Rule 4-3(k)(1). Counsel's argument does not reference Rule 4-3 or *Anders, supra*, and it merely concludes that "[s]ince the defendant did not provide a reasonable excuse for not having violated the above conditions, the trial 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 does not comply with Rule 4-3(k), and we order counsel to submit a complying no-merit brief within thirty days 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.

Cite as 2013 Ark. App. 435

Rebriefing ordered; motion to withdraw denied.

WHITEAKER and VAUGHT, JJ., agree.

C. Brian Williams, for appellant.

No response.