

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-12-1133

CARLTON HOBBS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 26, 2013

APPEAL FROM THE ARKANSAS
COUNTY CIRCUIT COURT,
SOUTHERN DISTRICT
[NO. CR-2009-67]

HONORABLE DAVID G. HENRY,
JUDGE

REBRIEFING ORDERED

BRANDON J. HARRISON, Judge

Carlton Hobbs was found guilty by a jury of one count of second-degree battery, for which he received a sentence of six years' imprisonment. Hobbs's attorney has filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k) (2012), along with a motion to be relieved as counsel, asserting that there is no issue of arguable merit for an appeal. Hobbs was notified, by certified mail, of his right to file pro se points for reversal but has not done so. The State has not filed a brief.

A request to withdraw on the ground that the appeal is wholly without merit must be accompanied by a brief, abstract, and addendum. Ark. Sup. Ct. R. 4-3(k)(1). The brief must contain an argument section that lists 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. *Id.* To further protect

the constitutional rights of an appellant, both counsel and this court must fully examine the lower proceedings as a whole to determine if an appeal would be wholly frivolous. *Walton v. State*, 94 Ark. App. 229, 228 S.W.3d 524 (2006).

In this case, we hold that the abstract is deficient because, while each adverse ruling was abstracted, testimony that was necessary to give context to the adverse rulings was omitted. The test for determining whether an appeal is without merit under Rule 4-3(k) is not whether counsel thinks that the circuit court committed no reversible error, but whether an appeal would be “wholly frivolous.” *Ewells v. State*, 2009 Ark. App. 520, 334 S.W.3d 876. Without an adequate brief that contains a sufficient abstract of the record, we cannot make a reasoned decision on whether counsel is entitled to be relieved on the ground that the appeal is without merit. *See Anders, supra; Mitchell v. State*, 327 Ark. 285, 938 S.W.2d 814 (1997).

Rebriefing ordered.

GLADWIN, C.J., and WALMSLEY, J., agree.

Brett D. Watson, Attorney at Law, PLLC, by: *Brett D. Watson*, for appellant.

No response.