

# ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR11-1294

IRINEO TIJERINA-PALACIOS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** August 29, 2012

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. CR2010-1639-1]

HONORABLE ROBIN F. GREEN,  
JUDGE

REBRIEFING ORDERED; MOTION  
DENIED

---

**RITA W. GRUBER, Judge**

On August 2, 2011, in the Benton County Circuit Court, appellant was convicted of rape, a Class Y felony, and sentenced to forty years' imprisonment with credit for 288 days in jail, a fine of \$1000, court costs, and fees. In its judgment and commitment order entered on August 18, 2011, the court required as a special condition that appellant "complete Sex Offender program while in the Department of Corrections." Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that an appeal in this matter would be wholly without merit. Appellant was provided with a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days. He has not raised any pro se points for reversal.

Counsel's motion was accompanied by a brief purportedly containing a list of all

rulings adverse to his client and an explanation as to why each adverse ruling is not a meritorious ground for reversal. We are bound to perform a full examination of the proceedings to decide if an appeal would be wholly frivolous. *Eads v. State*, 74 Ark. App. 363, 365, 47 S.W.3d 918, 919 (2001). If counsel fails to address all possible grounds for reversal, this court can deny the motion to withdraw and order rebriefing. *Id.* When an appeal is submitted to this court under the *Anders* format and we believe that an issue is not wholly frivolous, we are required to deny counsel's motion to withdraw and order rebriefing in adversary form. *Stribling v. State*, 2011 Ark. App. 386.

In this case, the circuit court stated in its judgment and commitment order that appellant was to complete a sex-offender program while in prison. This may have resulted in an illegal sentence. *White v. State*, 2012 Ark. 221, 408 S.W.3d 720 (holding court's imposition of mandatory sex-offender treatment in prison constituted an illegal sentence); *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909 (holding sentence of incarceration with a special condition that defendant complete a drug program was an illegal sentence). While this issue was not raised below, we view an issue of an illegal sentence as one of subject-matter jurisdiction that we may review whether or not it was raised below. *Richie*, 2009 Ark. App. 602, at 4, 357 S.W.3d at 912. Because counsel failed to address this possible ground for reversal and why it would not be wholly frivolous, we order rebriefing in adversary form.

Rebriefing ordered; motion to withdraw as counsel denied.

PITTMAN and HOOFFMAN, JJ., agree.

*James E. Hensley, Jr.*, for appellant.

No response.