

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-13-711

KENNETH WALKER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 30, 2014

APPEAL FROM THE DALLAS
COUNTY CIRCUIT COURT
[NO. CR-2012-51]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

RHONDA K. WOOD, Judge

Kenneth Walker appeals his conviction of driving while intoxicated. Pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Rule 4-3(k) (2013) of the Rules of the Arkansas Supreme Court and Court of Appeals, Walker’s counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. The motion is accompanied by a compliant abstract, addendum, and brief. Walker filed one pro se point, and as a consequence, the State filed a brief in response. We affirm and grant counsel’s motion to withdraw.

In determining the appropriateness of an *Anders* brief, the test is not whether appellant’s counsel thinks the circuit court did not commit reversible error, but whether the points to be raised on appeal would be wholly frivolous. *Anders, supra*. Pursuant to *Anders*, we are required to make a determination of whether the case is wholly frivolous after a full examination of all the proceedings. *Id.*

Appellant's counsel correctly notes that the only adverse rulings are the denial of Walker's motion for directed verdict and the renewal of the motion. We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Carruth v. State*, 2012 Ark. App. 305. This court has held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Ali v. State*, 2011 Ark. App. 758. We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.*

We hold that there was sufficient evidence to support the circuit court's rulings as to the denial of the original and renewed motions for directed verdict. Under Arkansas Code Annotated section 5-65-103(b) (Supp. 2013), it is unlawful for a person to operate or be in actual physical control of a motor vehicle if at that time the alcohol concentration in the person's breath was eight-hundredths (.08) or more. There was testimony at trial that the trooper pulled Walker over for not wearing a seatbelt. He arrested Walker after smelling intoxicants on his breath and gave him a preliminary breath test, which indicated that he was intoxicated. Once Walker was taken to the sheriff's office, he took another breathalyzer test registering an alcohol concentration of thirteen hundredths (.13). There was sufficient evidence to meet each element of the offense charged, and we hold that the circuit court did not err in denying Walker's motions for directed verdict.

Walker also filed pro se points challenging his conviction. Walker raises what amounts to an ineffective-assistance-of-counsel claim. We do not consider ineffective-

assistance claims that are not first made to the trial court, *Mace v. State*, 2012 Ark. App. 420, 421 S.W.3d 335.

Affirmed; motion to withdraw granted

WALMSLEY and BROWN, JJ., agree.

N. Mark Klappenbach, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.