

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CR-13-251

TIMOTHY ALLEN FIVEASH  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered September 3, 2014

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. CR-2012-112-3]

HONORABLE ROBERT  
MCCORKINDALE, JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

---

**BRANDON J. HARRISON, Judge**

Timothy Fiveash was found guilty by a jury of driving while under the influence and careless or prohibited driving. Fiveash'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) (2013), along with a motion to be relieved as counsel, asserting that there is no issue of arguable merit for an appeal. The clerk of this court mailed Fiveash a copy of his counsel's brief at his last known address, notifying him of his right to file a pro se statement of points for reversal, but the package was returned as undeliverable. We grant the motion to withdraw and affirm.

Fiveash was charged with driving while under the influence (DUI) and careless or prohibited driving after his vehicle had spun out of control and landed in a ditch on State Highway 392. At a jury trial held in November 2012, Arkansas State Police Officer Billy Martin testified that he had responded to the accident and spoken with Fiveash, whose

eyes were “completely glassed over.” Martin administered two field-sobriety tests, which Fiveash “performed very poorly,” and he was arrested for driving while under the influence.

Fiveash testified that the accident occurred because he “wasn’t used to driving a small car” and the car had “no flat tires . . . so you can’t tell if one is real low or not.” He stated that the car “just spun around and it rolled back in that low grade ditch.” He denied having taken any illegal drugs or that he had been drinking but did admit that he had been taking Adderall.

The jury found Fiveash guilty of DUI, for which he received a sentence of ninety days’ imprisonment and a \$1000 fine, and careless or prohibited driving, for which he received a \$100 fine. The court entered a sentencing order on 19 December 2012, and this timely appeal followed.

Counsel correctly states that any argument as to the sufficiency of the evidence is not preserved for this court’s review because there was no motion for directed verdict made below. Counsel has also abstracted and discussed the one evidentiary objection made below and adequately explained why it does not present a meritorious ground for appeal. From our review of the record and the brief presented to us, we find that counsel has complied with the requirements of Rule 4-3(k) and that the appeal is without merit. Therefore, we grant counsel’s motion to withdraw and affirm Fiveash’s convictions.

Affirmed; motion to withdraw granted.

GRUBER and WOOD, JJ., agree.

*Cullen & Co., PLLC*, by: *Tim J. Cullen*, for appellant.

No response.