

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-15-105

NOEL DOUGLAS TURNER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 17, 2015

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR-13-207]

HONORABLE SANDY HUCKABEE,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

BART F. VIRDEN, Judge

The Lonoke County Circuit Court found that appellant Noel Douglas Turner violated the terms and conditions of his probation and, upon revocation, sentenced him to serve two years in prison and suspended imposition of sentence for an additional three-year period. Defense counsel has filed a motion to withdraw on the basis that there is no merit to an appeal. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, counsel's motion to withdraw was accompanied by a brief that lists all rulings that were adverse to Turner with an explanation why each adverse ruling is not a meritorious ground for reversal. Turner was provided with a copy of counsel's brief and notified of his right to file pro se points for reversal. Turner has not filed any pro se points.

I. *Procedural History*

On March 21, 2014, Turner pleaded guilty to third-degree domestic battery and was sentenced to six years' probation. Turner received conditions of his probation, which included, among other things, that he must not commit a criminal offense punishable by imprisonment. The State filed a petition to revoke on May 8, 2014, alleging that Turner had violated the conditions of his probation by being arrested on April 11, 2014.

At the revocation hearing held on October 24, 2014, a probation officer testified to several violations, and Turner admitted that he had been arrested while on probation. Further, the State introduced into evidence Turner's docket profile from Jacksonville District Court indicating that on September 17, 2014, he pleaded guilty to committing the following offenses on April 11, 2014: two counts of terroristic threatening of a law-enforcement officer (Class A misdemeanor),¹ possession of drug paraphernalia (Class A misdemeanor),² third-degree assault (Class C misdemeanor).³ At the conclusion of the hearing, the trial court revoked Turner's probation based on his being arrested and pleading guilty to new charges.⁴

II. *Adverse Ruling*

The only adverse ruling was the revocation of Turner's probation. In revocation proceedings, the circuit court must find by a preponderance of the evidence that the appellant

¹Ark. Code Ann. § 5-13-301(b)(2) (Repl. 2013).

²Ark. Code Ann. § 5-64-443(a)(1) (Repl. 2005).

³Ark. Code Ann. § 5-13-207(b) (Repl. 2013).

⁴Class A and Class C misdemeanors are punishable by imprisonment. Ark. Code Ann. § 5-4-401(b)(1) & (3) (Repl. 2013).

inexcusably violated a condition of probation. *Hunter v. State*, 2013 Ark. App. 387. The State bears the burden of proof but needs to prove that the appellant committed only one violation of the conditions. *Id.* We agree with counsel that, considering the evidence adduced at the hearing, the trial court's revocation of Turner's probation was not clearly against a preponderance of the evidence and would not be a meritorious ground for reversal.⁵

III. *Conclusion*

From our review of the record and brief presented to us, we conclude that counsel has complied with Rule 4-3(k) and agree that there is no merit to an appeal. Therefore, we affirm the revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

GLADWIN, C.J., and BROWN, J., agree.

Robert M. "Robby" Golden, for appellant.

No response.

⁵We note that the trial court also revoked Turner's probation on the basis that he failed to report to his probation officer for intake as directed. Because the State did not allege such violation in its petition to revoke, and thus Turner had no notice of it, the trial court erred in revoking Turner's probation on that basis. Nevertheless, the State proved that Turner violated his conditions of probation by being arrested on and pleading guilty to new charges, which was sufficient to support revocation. *See, e.g., Maxwell v. State*, 2010 Ark. App. 822 (holding that trial court erred in revoking probation on violation not alleged in State's petition but that revocation could be affirmed on violation properly alleged because proof of only one violation is necessary).