

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-14-895

JESSE JAMES WASHINGTON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 17, 2015

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[No. CR-2008-1265]

HONORABLE JOHN N. FOGLEMAN,
JUDGE

AFFIRMED; MOTION TO WITHDRAW
GRANTED

LARRY D. VAUGHT, Judge

Jessie James Washington appeals from the Crittenden County Circuit Court's sentencing order entered on June 30, 2014, revoking his probation. Pursuant to Arkansas Supreme Court Rule 4-3(k) and *Anders v. California*, 386 U.S. 738 (1967), his attorney has filed a no-merit brief and a motion to withdraw as counsel, asserting that there is no issue of arguable merit to present on appeal. We affirm the revocation of Washington's probation and grant counsel's motion to withdraw.

Washington entered a plea of guilty to theft of property, a Class C felony, on July 20, 2009. He was sentenced to ten years' probation and ordered to pay fees and costs. On February 26, 2014, the State filed a petition to revoke Washington's probation, alleging that he had violated the conditions of his probation due to (1) failure to pay fines, costs, and fees as directed; (2) failure to report to probation as directed; (3) failure to pay probation fees; (4) failure to notify the sheriff and probation of his current address and employment; (5)

providing a false address to probation; and (6) departure from approved address without permission. On March 24, 2014, the State filed an amended petition, adding an allegation that Washington had also failed to pay restitution. After a hearing held on June 30, 2014, the circuit court found that Washington had violated the conditions of his probation by failing to report to his probation officer as directed. He was sentenced to thirty-six months in the Arkansas Department of Correction, followed by sixty months' suspended imposition of sentence. He filed a timely notice of appeal.

As allowed by Arkansas Supreme Court Rule 4-3(k) and *Anders*, Washington's counsel has filed a motion to withdraw, stating that there is no merit to an appeal. *Anders*, 386 U.S. 738. The motion is accompanied by an abstract and addendum of the proceedings below, as well as a brief, which states that there were no adverse rulings at the revocation hearing other than the circuit court's decision to revoke Washington's probation. Counsel's brief explains why there is nothing in the record that would support an appeal. The clerk of the court served Washington with a copy of counsel's brief and notified him of his right to file pro se points on appeal within thirty days. Washington filed no pro se points.

An attorney's motion to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client that were made on any objection, motion, or request made by either party. Ark. Sup. Ct. R. 4-3(k)(1). The brief must also contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Campbell v. State*, 74 Ark. App. 277, 279, 47 S.W.3d 915, 919 (2001) (citing *Anders*, 386 U.S. at 744).

From our review of the record and the brief presented to us, we hold that counsel has complied with Rule 4-3(k)(l) and agree that there is no merit to an appeal. At the hearing, Washington admitted that he knew he had an obligation to report to his probation officer but stopped reporting because he was depressed over his wife leaving him. Probation may be revoked upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. *Williams v. State*, 2013 Ark. App. 422, at 3. Although the petition and amended petition for revocation of Washington's probation alleged multiple violations, the State needed to prove only one. *Richardson v. State*, 85 Ark. App. 347, 350, 157 S.W.3d 536, 538 (2004). A trial court's decision to revoke probation will not be overturned on appeal unless it is clearly against the preponderance of the evidence. *Williams*, 2013 Ark. App. 422, at 3. In this case, the trial court's revocation of Washington's probation was not clearly erroneous or clearly against the preponderance of the evidence. *See Bishop v. State*, 2014 Ark. App. 41, at 4. Accordingly, we affirm the order of revocation and grant appellate counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

WHITEAKER and HIXSON, JJ., agree.

C. Brian Williams, for appellant.

No response.