

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-16-529

MARK JEFFERY LIVINGSTON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 18, 2017

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. 52CR-15-59]

HONORABLE ROBIN CARROLL,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

PHILLIP T. WHITEAKER, Judge

Mark Jeffery Livingston appeals from his Ouachita County Circuit Court conviction for rape. Appellate counsel has filed a motion with this court to be relieved as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2016). The motion is accompanied by a no-merit brief containing an abstract and addendum of the proceedings below. The abstract and addendum in counsel's brief include all objections and motions decided adversely to Livingston, and counsel explains in the argument portion of his brief why there is nothing in the record that would arguably support an appeal. Livingston was provided with a copy of his counsel's brief and motion and informed of his right to file pro se points, but he has not done so.

The test for filing a no-merit brief is not whether there is any reversible error but whether an appeal would be wholly frivolous. *See Wright v. State*, 2015 Ark. App. 300, at 1–2; *Tucker v. State*, 47 Ark. App. 96, 885 S.W.2d 904 (1994). From our review of the record and the brief presented to us, we find compliance with Rule 4–3(k) and conclude that there is no merit to an appeal.

Affirmed; motion to withdraw granted.

GLOVER and BROWN, JJ., agree.

N. Mark Kappenbach, for appellant.

No response.