

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-542

OTIS WADE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 19, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR2008-1037]

HONORABLE CHARLES DAVID
BURNETT, JUDGE

MOTION TO BE RELIEVED
DENIED; REBRIEFING ORDERED

JOSEPHINE LINKER HART, Judge

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), Otis Wade's counsel filed a motion to withdraw on grounds that the appeal is wholly without merit. The clerk of this court sent Wade a certified copy of his counsel's brief and motion to be relieved and informed him that he had the right to file pro se points for reversal. Wade availed himself of his right to file pro se points. In his filing, Wade raised the issue of whether he received an illegal sentence. We conclude that an appeal would not be wholly frivolous, and accordingly, we deny Wade's counsel's motion to be relieved and order rebriefing.

The issue of whether the appellant received an illegal sentence goes to subject-matter jurisdiction, and we may review the issue whether or not an objection was made in the circuit court. *Ritchie v. State*, 2009 Ark. App. 522, 337 S.W.3d 529. A sentence is void or illegal when

the court lacks authority to impose it. *Id.*

According to a judgment and disposition order filed November 25, 2008, Wade pleaded guilty to simultaneous possession of drugs and a firearm, a Class Y felony. The trial court placed him on probation for sixty months. The State later filed a petition to revoke Wade's probation on March 20, 2009. After a hearing on February 18, 2010, Wade's probation was revoked, and he was sentenced to 300 months' imprisonment in the Arkansas Department of Correction.

In his pro se points, Wade asserts that because probation was not authorized for a Class Y felony, the trial court erred in revoking his probation without correcting the original sentence. The State seems to agree with Wade, up to a point, but disagrees with Wade's proposed disposition of the case. Accordingly, counsel's motion to be relieved is denied, and counsel is ordered to prepare and file within thirty days a brief in adversarial form addressing the legality of Wade's sentence and the proper disposition of the case.

Motion to be relieved denied; rebriefing ordered.

VAUGHT, C.J., and GLOVER, J., agree.