

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-846

JEROME D. TERRY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MARCH 9, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR 2005-246]

HONORABLE STEPHEN TABOR,
JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

JOSEPHINE LINKER HART, Judge

According to a judgment and disposition order filed December 16, 2008, Jerome D. Terry received a suspended imposition of sentence for sixty months for possession of drug paraphernalia. On February 23, 2010, the State filed a petition to revoke the suspended imposition of sentence on the grounds that Terry committed the offenses of public intoxication, disorderly conduct, second-degree assault, and possession of drug paraphernalia. Following a hearing, the circuit court revoked Terry's suspended imposition of sentence and sentenced him to thirty-six months' imprisonment with an additional eighty-four month suspended imposition of sentence.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), Terry's counsel has filed a motion to withdraw on the ground that an appeal in

this matter would be wholly without merit. For three reasons, we must deny counsel's request for withdrawal and order rebriefing.

First, counsel's addendum does not contain, as required by our rules, material parts of the record. Ark. Sup. Ct. R. 4-3(k)(1). Neither the required original judgment and disposition order nor the conditions of Terry's initial suspended imposition of sentence are in the addendum. *See Mingo v. State*, 2011 Ark. App. 33. Because we consider the deficiencies to be such that this court cannot reach the merits of the case, we deny counsel's motion to withdraw and order rebriefing. Ark. Sup. Ct. R. 4-2(b)(3).

Second, Terry's counsel failed to explain why two adverse rulings were not meritorious grounds for reversal. Counsel's request 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 argument section of the brief must explain why each adverse ruling is not a meritorious ground for reversal. *Id.* If counsel fails to address all possible grounds for reversal, this court must deny the motion to withdraw and order rebriefing. *Mingo, supra.*

Near the end of the hearing, Terry's counsel argued that if the court found that Terry violated the terms and conditions of the suspended imposition of sentence, the court should consider extending his suspended imposition of sentence and place him on supervised probation. The court instead revoked the suspended imposition of sentence and sentenced

Cite as 2011 Ark. App. 186

Terry to thirty-six months' imprisonment with an additional suspended imposition of sentence of eighty-four months. Counsel discussed neither the court's rejection of his request nor the propriety of the sentence imposed. Because these adverse rulings were not discussed, we must deny the motion to withdraw and order rebriefing on this basis as well. *See Williams v. State*, 2011 Ark. App. 35.

And third, we conclude that counsel's discussion of the court's decision to revoke was inadequate. We cannot affirm an appellant's conviction and allow an attorney to withdraw without adequate discussion as to why a particular adverse ruling by the circuit court could not be a meritorious ground for reversal. *Id.* The brief submitted by counsel does not discuss why evidence presented to the circuit court would support the elements of the offenses set forth in the petition that served as the grounds for the revocation. Accordingly, we deny the motion to withdraw and order rebriefing for this reason as well.

Motion to withdraw denied; rebriefing ordered.

WYNNE and BROWN, JJ., agree.