

ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-17-25

JAMES EDWARD CRIPPEN, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 24, 2018

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CR-14-461]

HONORABLE GARY COTTRELL,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED WITHOUT
PREJUDICE

LARRY D. VAUGHT, Judge

On September 22, 2014, James Edward Crippen was charged by felony information as a habitual offender with simultaneous possession of drugs and firearms, trafficking methamphetamine, possession of drug paraphernalia, theft by receiving, fleeing, and possession of a firearm by certain persons.¹ A Crawford County jury convicted Crippen of trafficking methamphetamine, possession of drug paraphernalia, and fleeing² and sentenced him to twenty-five years'; five years' and a \$5,000 fine; and six years' imprisonment,

¹The circuit court later granted Crippen's motions for directed verdict on the charges of simultaneous possession of drugs and firearms and possession of a firearm by certain persons. The court also dismissed a habitual-offender charge.

²The jury acquitted Crippen of the theft-by-receiving charge.

respectively, in the Arkansas Department of Correction, to run consecutively, for a total of thirty-six years.

In this no-merit appeal, Crippen's appellate attorney filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k)(1) (2017), seeking to withdraw as counsel on the basis that there is no merit to the appeal. On July 24, 2017, Crippen filed pro se points pursuant to Rule 4-3(k)(2), and the State has filed a brief in response as required by Rule 4-3(k)(3). Our review of the record reveals that there was an adverse ruling that was abstracted but not discussed by counsel; therefore, we must deny counsel's motion to withdraw and order rebriefing because of counsel's noncompliance with Rule 4-3(k).

In a criminal no-merit appeal, counsel is required to abstract each adverse ruling by the circuit court and to discuss why each particular ruling would not present a meritorious basis for reversal. Ark. Sup. Ct. R. 4-3(k)(1); *Anders, supra*. We must order rebriefing if counsel fails to abstract and address every adverse ruling. *Sartin v. State*, 2010 Ark. 16, at 8, 362 S.W.3d 877, 882.

In the present case, Crippen's trial counsel made an oral motion to run Crippen's sentences concurrently, not consecutively. The circuit court denied the request and ordered that Crippen's sentences run consecutively. While counsel abstracted the motion, she did not argue in her brief why this adverse ruling was not meritorious.

Because the no-merit brief in this case is deficient, we order counsel to file a substituted abstract, brief, and addendum within fifteen days from the date of this opinion. Ark. Sup. Ct. R. 4-2(b)(3). The deficiency noted above should not be taken as an exhaustive list, and we encourage counsel to review the requirements contained in Rule 4-3(k)(1) prior to filing a

substituted brief. We express no opinion as to whether the substituted appeal should address the merits or should be made pursuant to Rule 4-3(k)(1). If a no-merit brief is filed, counsel's motion and brief will be forwarded by the clerk to Crippen so that, within thirty days, he will again have the opportunity to raise any points he chooses in accordance with Arkansas Supreme Court Rule 4-3(k)(2). In either instance, the State shall be afforded the opportunity to file a brief in response.

Rebriefing ordered; motion to withdraw denied without prejudice.

GLADWIN and MURPHY, JJ., agree.

Lisa-Marie Norris, for appellant.

Leslie Rutledge, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.