

Cite as 2018 Ark. App. 37

ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-17-593

LEZELL LEE DIGGS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 24, 2018

APPEAL FROM THE GRANT COUNTY
CIRCUIT COURT
[NO. 27CR-12-48]

HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED; MOTION TO WITHDRAW
GRANTED

LARRY D. VAUGHT, Judge

Appellant, Lezell Lee Diggs, appeals the revocation of his probation. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), Diggs's counsel has filed a no-merit brief and a motion to withdraw as counsel, asserting that there is no nonfrivolous argument to be made in support of an appeal. Diggs was notified via certified mail of his right to file pro se points for reversal, but he has not done so. We affirm the revocation and grant counsel's motion to withdraw.

On August 11, 2014, Diggs entered into a negotiated guilty plea to the charge of theft of property, a Class B felony, and was sentenced to twenty years' probation. Diggs signed conditions of probation, which required him to pay court costs of \$150, a DNA fee of \$250, and restitution of \$49,752.51 at the rate of \$250 a month beginning September 11, 2014. On

February 10, 2017, the State filed a petition to revoke Diggs's probation. Diggs was arrested in Sunflower County, Mississippi, and waived extradition to Arkansas on March 2, 2017. The circuit court held a hearing on March 22, 2017, and found that Diggs had violated the conditions of his probation by committing the offense of arson, failing to provide proof of employment, failing to update his probation officer as to his place of residence, failing to report to his supervising officer, failing to provide proof of employment, failing to pay restitution, and failing to pay court costs and fines. The circuit court revoked his probation and sentenced him to twenty years' imprisonment in the Arkansas Department of Correction (ADC).

On appeal, we review probation-revocation orders to determine whether the circuit court's findings are clearly against the preponderance of the evidence. *Jones v. State*, 2013 Ark. App. 466, at 1. To revoke probation, the State has the burden of proving by a preponderance of the evidence that a condition of probation was violated. *Id.* Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Joiner v. State*, 2012 Ark. App. 380, at 2. Proof of just one violation of the terms and conditions of release is sufficient to support revocation. *Id.* at 3.

Diggs's counsel argues that there are no meritorious grounds for appeal and asks to withdraw as counsel. A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief that contains a list of all rulings adverse to appellant and an explanation as to why each ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1). The brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by

either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. *Id.*

In this case, counsel correctly notes that the only adverse ruling was the revocation of Diggs's probation. Counsel provides sound analysis establishing that the circuit court was correct in its ruling that there was sufficient evidence to find that Diggs had violated the conditions of his probation. We agree; the circuit court heard sufficient evidence to find by a preponderance of the evidence that Diggs had violated his probation by failing to pay his fines, fees, costs, and restitution; failing to report; failing to maintain required employment and housing; and by committing a criminal offense punishable by imprisonment. Specifically, Probation and Parole Officer Randy Zimmerman testified that Diggs was delinquent in making the required payments, had failed to report to his supervising officer in Mississippi, had failed to provide proof of residence, and had been charged with the offense of arson in Mississippi.

In deciding whether to allow counsel to withdraw from appellate representation, the test is not whether counsel thinks the circuit court committed no reversible error, but whether the points to be raised on appeal would be wholly frivolous. *Williams v. State*, 2013 Ark. App. 323. In this case, we find compliance with Rule 4-3(k)(1) and *Anders* and hold that there is no merit to this appeal.

Affirmed; motion to withdraw granted.

GLADWIN and MURPHY, JJ., agree.

Philip C. Wilson, for appellant.

One brief only.