

Cite as 2018 Ark. App. 373

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-17-841

CHRISTOPHER CLONINGER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 20, 2018

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[NO. 40CR-15-43]

HONORABLE ALEX GUYNN,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

PHILLIP T. WHITEAKER, Judge

Christopher Cloninger appeals from his Lincoln County Circuit Court convictions for first-degree battery and second-degree battery. Appellate counsel has filed a motion with this court to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2017),¹ as well as an accompanying no-merit brief containing an abstract and addendum of the proceedings below. Counsel notes that the sole adverse ruling made at trial was the denial of Cloninger's motion for directed verdict. Counsel explains in the argument portion of his brief why there is nothing in the record that would

¹Appellate counsel cites *Anders, supra*, and Rule 4-3(k) in his jurisdictional statement and in his motion to be relieved, but he cites neither in the body of his brief. Including those citations within the appellate brief is not required by law, but our court has frequently noted that to do so would be the better practice. See, e.g., *Coleman v. State*, 2014 Ark. App. 61; *Rimmer v. State*, 2014 Ark. App. 30; *Edwards v. State*, 2014 Ark. App. 7.

arguably support an appeal. Cloninger 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.

GLADWIN and GLOVER, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

One brief only.