

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-433

LASHELLE GRAHAM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 13, 2010

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT,
[NO. CR-2008-54-1]

HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

ROBERT J. GLADWIN, Judge

The appellant, Lashelle Graham, appeals her conviction from the Hot Spring County Circuit Court on a charge of Theft of Property, a Class C felony, for which she was sentenced to five years' supervised probation, fined \$1,000.00, and required to pay \$1,525.99 in restitution, as well as fees and costs. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3 of the Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. The motion is accompanied by an abstract and addendum of the proceedings below, including all objections and motions decided adversely to appellant, and a brief in which counsel explains why there is nothing in the record that would support an appeal.

The clerk of this court provided appellant with a copy of her counsel's brief and

notified her of her right to file a pro se statement of points for reversal within thirty days. She filed pro se points, and as a consequence, the State Attorney General filed a brief in response, as required by Arkansas Supreme Court Rule 4-3, in which it concurs that appellant's appeal is without merit.

As this is a no-merit appeal, counsel is required to list each ruling adverse to the defendant and to explain why each adverse ruling does not present a meritorious ground for reversal. *Anders, supra*; Ark. Sup. Ct. R. 4-3; *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). 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. *Anders, supra*; *Eads, supra*. Pursuant to *Anders*, we are required to make a determination of whether the case is wholly frivolous after a full examination of all the proceedings. *Anders, supra*; *Eads, supra*.

Counsel submits that the only adverse ruling is the circuit court's finding of guilt on the charge of theft of property after evidence was presented that she purchased a large television from Sears with a fraudulent check. All but one of appellant's pro se points focuses on her attempt to challenge the sufficiency of the evidence; however, because she did not move for a directed verdict at any time during her bench trial, she has waived any argument as to the sufficiency of the State's evidence against her. Ark. R. Crim. P. 33.1 (2009).

The only pro se point that does not relate to appellant's challenge to the sufficiency of the evidence is a claim that she does not believe that her attorney represented her to the best of his ability. The State contends, and we agree, that appellant cannot claim on direct

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appeal that her counsel was ineffective unless she filed a motion for new trial and claimed her counsel was ineffective in that motion. *E.g., Maxwell v. State*, 359 Ark. 335, 197 S.W.3d 442 (2004). No such motion was filed in the instant case; accordingly, any attack on the effectiveness of counsel must be made in a petition filed under Rule 37 of the Arkansas Rules of Criminal Procedure.

From our review of the record and the briefs presented to us, we find compliance with Rule 4-3, and that the appeal is without merit. Accordingly, counsel's motion to be relieved is granted and the order dismissing the appeal from district court to circuit court is affirmed.

Affirmed; motion to be relieved granted.

PITTMAN and HART, JJ., agree.