

## ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR08-1121

DENNIS ERIC MORGAN  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** JANUARY 13, 2010

APPEAL FROM THE DREW COUNTY  
CIRCUIT COURT,  
[CR-02-248-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED; MOTION GRANTED

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**RITA W. GRUBER, Judge**

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and in compliance with our order for rebriefing, counsel for Dennis Eric Morgan brings a no-merit appeal and asks to be relieved as counsel in this case. *See Morgan v. State*, 2009 Ark. App. 529, 2009 WL 1884491 (finding that counsel's initial brief did not fulfill the requirement of Ark. Sup. Ct. R. 4-3(k)(1) that the argument section of the no-merit appeal include all rulings adverse to the appellant made by the trial court and explain why each ruling is not a meritorious ground for reversal). Morgan has not filed points for reversal in the present case despite being notified by the clerk of this court that he had thirty days to do so, nor has the State filed a brief.<sup>1</sup>

On January 24, 2005, the circuit court accepted Morgan's guilty plea to two counts

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<sup>1</sup>The State has informed this court that it has no adversarial interest in the resolution of the ultimate issue before this court, whether Morgan should be relieved as counsel, and has stated its understanding that in light of Morgan's failure to identify points for reversal, there is no pleading to which the State can respond.

of second-degree forgery and sentenced him to thirty-six months' probation. The State subsequently filed a petition for revocation of probation, alleging that Morgan had violated written conditions of probation. At the conclusion of a revocation hearing on April 7, 2008, the circuit court found that Morgan had violated conditions 1) by committing another criminal act, which again involved fraud; and 2) by inexcusably failing to pay restitution, costs, and fees. The court revoked Morgan's probation and sentenced him to six years' imprisonment. The written order of revocation was entered on April 10, 2008.

In our previous opinion, we explained the shortcomings of counsel's first brief:

Counsel for appellant stated that there were no adverse rulings by the court on which to base an appeal and, consequently, he did not list or explain any of the court's rulings. While we agree that appellant neither made any objections upon which to base an appeal nor challenged the sufficiency of the evidence, counsel must address the sufficiency of the evidence in an appeal from a revocation. The requirements of Ark. R. Crim. P. 33.1, that a defendant must move for a dismissal to preserve the issue of sufficiency of the evidence, do not apply to revocation hearings. *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001).

*Morgan*, 2009 Ark. App. 529, at 2. Counsel's substituted brief has corrected the shortcomings of the first brief, and it addresses the sufficiency of the evidence to support the adverse ruling that Morgan violated conditions of his probation.

In order to sustain a revocation, the State need show only one violation of probation. *Phillips v. State*, 101 Ark. App. 190, 272 S.W.3d 123 (2008). Counsel points to testimony at the revocation hearing that Morgan admitted trying to have someone else cash copies of postal money orders and admitted making no payments whatsoever toward court costs or victim restitution. Counsel concludes that there was sufficient evidence to support the trial

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court's ruling that Morgan violated conditions of his probation to refrain from committing a criminal act and to pay costs and restitution.

Counsel's substituted brief fully complies with the requirements of Rule 4-3(k)(1) and specifically explains why the only ruling adverse to Morgan, the sufficiency of the evidence, is not a meritorious ground for reversal. We therefore affirm the revocation and grant counsel's motion to withdraw.

Affirmed; motion granted.

ROBBINS and KINARD, JJ., agree.