

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR09-898

JOSHUA JEROME THOMAS,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered 13 JANUARY 2010

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT,
[NO. CR-08-107]

HONORABLE PHILLIP T.
WHITEAKER, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

D.P. MARSHALL JR., Judge

After a bench trial, the circuit court convicted Joshua Thomas of second-degree sexual assault. The circuit court sentenced Thomas to five years' imprisonment with two years suspended. Thomas's lawyer has filed a no-merit brief and moved to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Arkansas Supreme Court and Court of Appeals Rule 4-3(k). The Clerk and Thomas's lawyer sent Thomas a copy of the brief, but Thomas has filed no pro se points for reversal.

Counsel's brief addresses the singular adverse ruling in this case—the circuit court's denial of Thomas's directed-verdict motions. In those motions, Thomas argued that the State failed to prove sexual gratification, a required element of second-degree sexual assault. Ark. Code Ann. §§ 5-14-125(a)(1), 5-14-101(10) (Supp. 2009). On this

record, we agree with Thomas's lawyer: an appeal on the merits would be wholly frivolous. *Anders*, 386 U.S. at 744.

The victim, a certified nursing assistant at a mental health facility where Thomas was living, testified about the incident. She was speaking with Thomas about his in-house treatment plan when Thomas asked her if she wanted to have sex with him. She declined and left the room to gather her paperwork. When she turned around, Thomas was standing there wearing "nothing but a pair of socks." Thomas, who had an erection, grabbed her and tried to pull her pants down. He held her across her breasts, rubbed her buttocks, and tried to force her into a nearby room. When the victim started screaming, Thomas let go and she escaped.

Thomas suffers from schizophrenia. He admitted the facts about the incident both in a statement to police and at trial. He blamed his actions, however, on his mental illness. Before trial, Thomas sought and received a mental evaluation to assess both his current mental state and his mental state at the time of the alleged crime. Thomas was evaluated twice—once by a psychiatrist and once by a psychologist. Both concluded that Thomas was fit to proceed to trial and that, at the time of the incident, he had the capacity to appreciate the criminality of his actions and the ability to conform his conduct to the requirements of the law. Ark. Code Ann. §§ 5-2-302, 5-2-312 (Repl. 2006). Thomas thus continued on to trial without mental disease as a

defense.

The State had to prove that Thomas engaged in sexual contact with another person by forcible compulsion. Ark. Code Ann. § 5-14-125(a)(1). Sexual contact means “any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.” Ark. Code Ann. § 5-14-101(10). The victim’s testimony and Thomas’s admissions provided substantial evidence that Thomas was acting for the purpose of sexual gratification. An appeal on the merits would therefore be wholly frivolous. *Anders, supra*.

Affirmed; motion to withdraw granted.

VAUGHT, C.J., and GLOVER, J., agree.