

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CACR09-924

ROBERT FLUKER, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** June 23, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CR-2007-2401]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**JOHN MAUZY PITTMAN, Judge**

Appellant entered a negotiated plea of guilty in January 2008 to felony residential burglary and misdemeanor theft of property, for which he was placed on probation for a period of five years. He entered a negotiated plea of guilty in October 2008 to charges that he violated the conditions of his probation, and he was placed on probation for a period of three years. A second petition to revoke alleging that he violated the conditions of his probation was filed in February 2009. After a hearing, the trial court found that appellant violated the conditions of his probation, revoked his probation, and sentenced him to twenty years' imprisonment for the burglary and theft convictions to which he pleaded guilty in January 2008. This appeal followed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's attorney has filed a motion

to withdraw as counsel on the ground that the appeal is wholly without merit. The motion is accompanied by an abstract, brief, and addendum referring to everything in the record that might arguably support the appeal and including a statement of reasons why none of the rulings would be a meritorious ground for reversal.

The clerk of this court furnished appellant with a copy of his counsel's brief and notified him of his right to file a pro se statement of points for reversal within thirty days. Appellant filed such a statement, arguing that the no-merit procedure denies him effective assistance of counsel and that his twenty-year sentence was illegal because he was originally "sentenced" to only five years' probation. Appellant's first point is meritless because *Anders* itself sets out the procedure for assuring that the right to counsel is protected in no-merit cases. See *Dudley v. State*, 285 Ark. 160, 685 S.W.2d 170 (1985). His second point is apparently based on a failure to distinguish between a period of probation term and a sentence to incarceration for a term of years. Arkansas Code Annotated section 5-4-309(g) (Supp. 2009) expressly provides that, when a court revokes probation, it may enter a judgment of conviction for the offense that gave rise to the probation and may impose any sentence that could have been imposed originally for that offense. Simply put, a probationer is subject to a sentence greater than the probationary period if such sentence could have been imposed for the underlying offense. *Harris v. State*, 270 Ark. 634, 606 S.W.2d 93 (1980). Here, the residential burglary for which appellant was eventually sentenced was a Class B felony, Ark.

Cite as 2010 Ark. App. 513

Code Ann. § 5-39-201(a) (Repl. 2006), for which the appropriate range of imprisonment is between five and twenty years, Ark. Code Ann. § 5-4-401 (Repl. 2006).

From our review of the record and the briefs presented to us, we find compliance with Rule 4-3(k) and that the appeal is without merit. Accordingly, counsel's motion to withdraw is granted, and the order of revocation is affirmed.

Affirmed; motion to withdraw granted.

HART and KINARD, JJ., agree.