

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 09-1014

DONALD GENE GAITHER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR-2007-1071]

HONORABLE DAVID L.
REYNOLDS, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

A Faulkner County judge revoked Donald Gaither’s probation and ordered him to serve six years in the Arkansas Department of Correction. His attorney has filed a motion to withdraw as counsel, citing an inability to find a meritorious ground for reversal. Counsel has also submitted a no-merit brief pursuant to *Anders v. California*¹ and Arkansas Supreme Court Rule 4-3(k). Gaither has filed no pro se points. We agree that an appeal would be wholly without merit. Thus, we affirm the revocation and grant counsel’s motion to withdraw.

An attorney’s request to withdraw from appellate representation based upon a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client

¹ 386 U.S. 738 (1967).

made on any objection, motion, or request made by either party.² The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal.³ We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous.⁴ If counsel fails to address all possible grounds for reversal, we can deny the motion to withdraw and order rebriefing.⁵

The only adverse ruling is the decision to revoke Gaither's probation. Gaither was serving four years' probation for aggravated assault. Six months into his probationary term, the State filed a petition to revoke, alleging that he had failed to report or pay his fines and costs. At the revocation hearing, Gaither's probation officer testified that Gaither was "in a sense" homeless when he was placed on probation. Because Gaither was from Oklahoma, his probation officer allowed him to temporarily move to Oklahoma to live with his parents. Gaither reported on December 13, 2007, at which time he was instructed to report the next day for reporting instructions in Oklahoma. But Gaither failed to return, and the probation office had not heard from him since. Efforts to contact Gaither in Oklahoma failed, and when one officer contacted Gaither's parents, the parents reported that they had no contact with him. In addition, Gaither never made any payments on his fines and costs owed. After

² *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001).

³ *Id.*

⁴ *Campbell v. State*, 74 Ark. App. 277, 47 S.W.3d 915 (2001).

⁵ *Sweeney v. State*, 69 Ark. App. 7, 9 S.W.3d 529 (2000).

considering the testimony and arguments from counsel, the court found that Gaither had violated the terms and conditions of his probation and sentenced him to six years in the Arkansas Department of Correction.

An appeal from the revocation would be frivolous. A sentence of probation or a suspended sentence may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation or suspended sentence.⁶ The State need only show that the appellant committed one violation to sustain a revocation.⁷ Here, the record clearly shows that he stopped reporting months after being placed on probation, and an appeal from the court's finding that he violated the terms and conditions of his probation would be wholly without merit.

Counsel has complied with the dictates of *Anders v. California* and Arkansas Supreme Court Rule 4-3(k). Accordingly, we affirm the revocation and grant counsel's motion to withdraw.

VAUGHT, C.J., and GRUBER, J., agree.

⁶ Ark. Code Ann. § 5-4-309(d) (Repl. 2008); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

⁷ *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).