

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR09-1302

RAYMOND YSEL BELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 6, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT

[NO. CR-2006-657]

HONORABLE STEPHEN MERRILL
TABOR, JUDGE

REBRIEFING ORDERED

RITA W. GRUBER, Judge

In December 2005, appellant Raymond Ysel Bell pleaded guilty to aggravated robbery and was given an adult five-year suspended sentence by the Sebastian County Circuit Court under the Extended Juvenile Jurisdiction Act. The State filed a petition to revoke on March 31, 2009, alleging that appellant had violated the terms of his suspended sentence by committing the felony offenses of rape and residential burglary on January 17, 2009. After a hearing, the trial court granted the petition to revoke and sentenced appellant to twenty years' imprisonment.

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 counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. Rule 4-3(k)(1) requires

this motion to be accompanied by a brief that contains an argument section listing all rulings adverse to the appellant made by the trial court and explaining why each adverse ruling is not a meritorious ground for reversal. Appellant has filed pro se points in accordance with Rule 4-3(k)(2). Because counsel has not fulfilled his obligations under the rule, we order rebriefing.

Counsel for appellant briefed one adverse ruling by the court but did not address the sufficiency of the evidence because appellant did not move for a directed verdict. Citing Rule 33.1 of the Arkansas Rules of Criminal Procedure, counsel stated that the issue of the sufficiency of the evidence was not preserved for appeal. While we agree that appellant did not challenge the sufficiency of the evidence, counsel must nevertheless address it in an appeal from a revocation. The requirements of Rule 33.1 do not apply to revocation hearings. *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). The decision to revoke is an adverse ruling that must be addressed by counsel in an *Anders* brief. *Seay v. State*, 2010 Ark. App. 36.

Therefore, we order counsel to file a substituted brief that complies with the rule within thirty days from the date of this opinion. When the brief is filed, we will consider it together with the pro se points that appellant raised pursuant to Ark. Sup. Ct. R. 4-3(k)(2).

Rebriefing ordered.

HENRY and BAKER, JJ., agree.