

## ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR10-814

COREY D. JENKINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** March 30, 2011

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. CR-99-208-1]

HONORABLE JOHN HOMER  
WRIGHT, JUDGE

AFFIRMED; MOTION GRANTED

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**WAYMOND M. BROWN, Judge**

This is a no-merit appeal from the revocation of appellant Corey Jenkins's probation wherein he was sentenced to four years in the Arkansas Department of Correction. Jenkins's attorney has filed a no-merit brief and a motion to withdraw pursuant to *Anders v. California*<sup>1</sup> and Arkansas Supreme Court Rule 4-3(k). Jenkins was provided a copy of his counsel's brief and was notified of his right to file a list of pro se points on appeal within thirty days. He has not raised any pro se points for reversal. We agree that an appeal would be wholly without merit. Accordingly, 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

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<sup>1</sup>386 U.S. 738 (1967).

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

The only adverse ruling is the decision to revoke Jenkins's probation. Jenkins pled guilty to possession of a controlled substance (cocaine) and was sentenced to ten years' probation, subject to certain conditions, in November 1999. Jenkins's probation officer filed a violation report on April 2, 2007, alleging that Jenkins had failed to report, had used marijuana, and had failed to pay his court costs. The State filed a petition to show cause on April 16, 2007, and included the violation report in its petition. The court filed an order directing Jenkins to show cause on April 18, 2007. The court also issued a bench warrant for Jenkins that same day. On February 9, 2010, Jenkins was arrested and served with the order to show cause.

At Jenkins's hearing, the State called Danny Marsh. Marsh testified that he was Jenkins's current probation officer.<sup>6</sup> Marsh stated that Jenkins had not reported since October

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

<sup>3</sup>*Id.*

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

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

<sup>6</sup>Marsh was assigned to Jenkins's case after Jenkins's original probation officer, Monica Longtin, left. Marsh had never met with Jenkins.

27, 2006. During the October 2006 meeting, Jenkins signed a confession stating that he had used marijuana within the past three weeks.<sup>7</sup> Jenkins was scheduled to report on November 17, 2006; however, he did not appear for the appointment. Marsh stated that Jenkins was sent several letters by Monica Longtin advising him to report.<sup>8</sup> Jenkins never reported. Marsh testified that it was Longtin who filed the violation report against Jenkins. Marsh said that he confirmed with Robin Ward of Garland County that Jenkins had not paid anything on the \$160 he was ordered to pay in court costs. According to Marsh, at the time of the hearing, Jenkins owed \$390, \$230 of which were service fees.

On cross-examination, Marsh acknowledged that Longtin spoke with Jenkins over the phone on December 27, 2006. Marsh stated that Jenkins was instructed to report on December 29, 2006. Jenkins did not report as instructed. Marsh testified that it appeared that Longtin made several attempts to allow Jenkins to come in before filing her violation report in April 2007.

Jenkins testified that he was “kinda guilty” of not reporting to his probation officer since October 2006. He stated that he was a single father of five children, and that although he knew that he was supposed to report to his probation officer, he was “just trying to concentrate on doing everything right and just being there for [his children].” Jenkins explained that he just wanted “that behind [him].” He told the court that he would “pay whatever needs to be paid, or . . . go back and do whatever -- make up the time that [he] did

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<sup>7</sup>The confession was introduced at the hearing without objection.

<sup>8</sup>The last letter was sent on February 1, 2007.

miss[.]” Jenkins stated that he did not report at the scheduled times because either his surgery was coming up, he did not have the money, or he did not have a daycare at the time. He testified that he worked for a friend at the time and that he was also “a volunteer boxing trainer in Conway. . . on the weekends.” He stated that his wife watched the children when she was not working, but that when she was off, it was time for him to go to work. He also explained that since he did not have a driver’s license he had to ride in a cab or be dropped off by someone. Jenkins stated that he currently worked temporarily for his landlord cleaning up when someone moved out of the trailer park. He testified that he could get away from his children by asking a neighbor to sit with them or by having his eleven-year-old daughter watch her siblings. Jenkins said that his address has always been the same and that he did not understand why someone showed up at his doorstep after eleven years claiming that he had violations.

At the conclusion of the hearing, the court found Jenkins in violation of the conditions of his probation as alleged in the violation report. The court sentenced Jenkins to four years’ imprisonment. This appeal followed.

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.<sup>9</sup> The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions.<sup>10</sup>

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<sup>9</sup>Ark. Code Ann. § 5-4-309 (Supp. 2009); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006).

<sup>10</sup>*Id.*

Cite as 2011 Ark. App. 248

Here, Jenkins acknowledged that he was guilty of failing to report. His confession of drug usage was also introduced at the hearing. Additionally, Marsh testified that Jenkins had not paid anything toward his court costs. Based on this evidence, we agree that an appeal from the court's decision to revoke Jenkins's probation would be wholly without merit. Thus, we affirm the revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

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