

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-646

OSCAR PEREZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered APRIL 6, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT

[NOS. CR-03-255, CR03-687,
CR03-914]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

RAYMOND R. ABRAMSON, Judge

Appellant Oscar Perez was serving a suspended sentence on possession of marijuana with intent to deliver, possession of methamphetamine, possession of a defaced firearm, breaking and entering, and two counts of possession of drug paraphernalia. The State filed an amended petition to revoke on all counts—except the possession of a defaced firearm charge—on the basis that Perez had committed other criminal acts and had failed to pay restitution. After a hearing on the petition to revoke, the trial court granted the revocation and sentenced Perez to a combined total of thirty-one years’ imprisonment on all the underlying counts. 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 grounds that the appeal is without merit. The clerk of this court furnished Perez a certified copy of his counsel's brief and motion to be relieved, informing him that he had the right to file pro se points for reversal. Perez did not file any pro se points.

The motion submitted by appellant's counsel was accompanied by an abstract and brief purportedly referring to everything in the record that might arguably support an appeal. The brief, however, is deficient.

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 made on any objection, motion, or request made by either party. *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001). The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* In a criminal case, a no-merit brief that fails to explain an adverse ruling does not satisfy the requirements of Rule 4-3(k)(1) and must be rebriefed. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877 (per curiam).

While counsel's brief addresses the sufficiency of the evidence and the court's decision to run Perez's sentences consecutively, there is at least one minor adverse ruling that is abstracted but goes unmentioned in the argument section of the brief. Counsel fails to address the trial court's denial of Perez's motion for continuance to retain counsel at the beginning of the revocation hearing. Even if it turns out that an appeal in this case is wholly without merit, this court cannot so hold without a brief that complies with our rules. *Williams v. State*, 2011 Ark. App. 4.

Additionally, counsel does not address the trial court's revocation on the possession of a defaced firearm charge. Neither the petition to revoke, nor the amended petition to revoke requests revocation on that underlying conviction. There is also no mention of this conviction at the hearing. However, the judgment and sentence entered upon revocation indicates that Perez's suspended sentence was revoked on the underlying conviction for possession of a defaced firearm, and that his sentence on that charge would be run concurrently to the other five underlying crimes.

As counsel has failed to address every ruling adverse to Perez, counsel's motion to withdraw is denied and a substituted brief that complies with this rule must be filed within thirty days from the date of this opinion. *See Seay v. State*, 2010 Ark. App. 36. Counsel should also fully examine the record to ensure that all rulings adverse to his client are discussed in the substituted brief.

Motion to withdraw as counsel is denied and rebriefing ordered.

PITTMAN and MARTIN, JJ., agree.