

Cite as 2019 Ark. App. 2

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CR-18-506

COLBY BULLINGTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 16, 2019

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT

[NOS. 66FCR-14-483, 66FCR-15-386,  
AND 66FCR-16-1146]

HONORABLE JAMES O. COX,  
JUDGE

REBRIEFING ORDERED; MOTION  
TO WITHDRAW DENIED

---

**RITA W. GRUBER, Chief Judge**

Colby Bullington appeals from the revocation of his suspended sentences in three cases. The State’s petition to revoke in each case was based in part on the allegation that Bullington committed the offense of rape on April 21, 2017. Following the revocation hearing, the Sebastian County Circuit Court revoked Bullington’s suspended sentences upon finding by a preponderance of the evidence that Bullington had violated the conditions of his probation by committing the offense of rape. The circuit court revoked his suspended sentences and sentenced him to serve a total of twenty-six years’ imprisonment, with the sentences to run consecutively.

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, Bullington’s counsel has filed a no-merit brief and a motion to withdraw asserting that there is no issue of arguable merit to

raise on appeal. Although Bullington was sent a copy of his counsel's brief and motion by mail notifying him of his right to present pro se points for reversal, he did not file any pro se points.

Our review of the record reveals that there was an adverse ruling that was abstracted but not discussed by counsel; therefore, we must deny counsel's motion to withdraw and order rebriefing because of counsel's failure to comply with Rule 4-3(k). In a criminal no-merit appeal, counsel is required to abstract each adverse ruling by the circuit court and to discuss why each particular ruling would not present a meritorious basis for reversal. Ark. Sup. Ct. R. 4-3(k)(1) (2018); *Anders, supra*. We must order rebriefing if counsel fails to abstract and address every adverse ruling. *Sartin v. State*, 2010 Ark. 16, at 8, 362 S.W.3d 877, 882.

Following the conclusion of testimony but before the circuit court's ruling, counsel for appellant requested that sentencing be withheld until after the rape case had been tried. The State responded to this request, and the circuit court proceeded to sentencing. While this colloquy is abstracted, counsel did not argue in the brief why this ruling would not be a meritorious basis for reversal.

Because the no-merit brief in this case is deficient, we order counsel to file a substituted abstract, brief, and addendum within fifteen days from the date of this opinion. Ark. Sup. Ct. R. 4-2. The deficiency noted above should not be taken as an exhaustive list, and we encourage counsel to review the requirements contained in Rule 4-3(k)(1) before filing a substituted brief. We express no opinion as to whether the substituted appeal should address the merits or should be made pursuant to Rule 4-3(k)(1). If a no-merit brief is filed,

counsel's motion and brief will be forwarded by the clerk to Bullington so that, within thirty days, he will again have the opportunity to raise any points he chooses in accordance with Arkansas Supreme Court Rule 4-3(k)(2).

Rebriefing ordered; motion to withdraw denied.

KLAPPENBACH and VAUGHT, JJ., agree.

*Dusti Standridge*, for appellant.

One brief only.