

Cite as 2019 Ark. App. 3
ARKANSAS COURT OF APPEALS
DIVISION I
No. CR-17-1078

MICHAEL DYE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 16, 2019

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NOS. 17CR-09-315; 17CR-12-241;
17CR-13-50]

HONORABLE GARY COTTRELL,
JUDGE

REBRIEFING ORDERED;
MOTION TO
WITHDRAW DENIED

RAYMOND R. ABRAMSON, Judge

Michael Dye appeals a Crawford County Circuit Court order revoking his suspended imposition of sentence (SIS) and sentencing him to twelve years' imprisonment with an additional eight years' SIS. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) (2017) of the Rules of the Arkansas Supreme Court and Court of Appeals, Dye's attorney has filed a no-merit brief and a motion to withdraw, arguing that this appeal is without merit. However, counsel's no-merit brief is not in compliance with *Anders* and Rule 4-3(k). Therefore, we order rebriefing and deny without prejudice counsel's motion to withdraw.

Rule 4-3(k)(1) requires that the argument section of a no-merit brief contain "a list of all rulings adverse to the defendant made by the circuit court on all objections . . . with

an explanation as to why each . . . is not a meritorious ground for reversal” and that “the abstract and addendum of the brief shall contain . . . all rulings adverse to the defendant.” Ark. Sup. Ct. R. 4-3(k)(1). Generally speaking, if a no-merit brief fails to address all the adverse rulings, it will be sent back for rebriefing. *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877. The requirement for abstracting and briefing every adverse ruling ensures that the due-process concerns in *Anders* are met and prevents the unnecessary risk of a deficient *Anders* brief resulting in an incorrect decision on counsel’s motion to withdraw. *Id.* For these reasons, a no-merit brief in a criminal case that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(k)(1), and rebriefing will be required. *Id.*

Our review of the record reveals an adverse ruling that was neither abstracted nor argued by counsel. Specifically, pages 104 and 105 of the record reflect that, at the beginning of the September 20, 2017 revocation hearing, the court denied Dye’s motion to continue the hearing due to his health issues. Because of the deficiency, we deny counsel’s motion to withdraw and order rebriefing. The deficiency we have noted should not be considered an exhaustive list, and counsel is strongly encouraged to review *Anders* and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals for the requirements of a no-merit brief.

Rebriefing ordered; motion to withdraw denied.

GLOVER and BROWN, JJ., agree.

Lisa-Marie Norris, for appellant.

One brief only.