

Cite as 2019 Ark. App. 14
ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-18-90

ANTHONY BEARE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 16, 2019

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
OSCEOLA DISTRICT
[NO. 47OCR-17-74]

HONORABLE TONYA M.
ALEXANDER, JUDGE

DISMISSED; MOTION TO WITHDRAW
GRANTED

LARRY D. VAUGHT, Judge

On October 27, 2017, the Mississippi County Circuit Court entered a judgment of acquittal finding that Anthony Beare committed the offense of aggravated assault; he lacked the capacity, as a result of mental disease or defect, at the time of the offense to conform his conduct to the requirements of the law or to appreciate the criminality of his conduct; and he was acquitted of the offense by reason of his mental disease or defect and committed to the care and custody of the Arkansas Department of Human Services for further treatment and services. Beare's counsel filed a timely notice of appeal, followed by a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2018), along with a motion to be relieved as counsel, asserting that there is no issue of arguable merit on appeal.

A request to withdraw on the ground that the appeal is wholly without merit shall be accompanied by a brief, including an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. *Rajford v. State*, 2012 Ark. App. 414, at 2 (citing Ark. Sup. Ct. R. 4-3(k)(1); *Eads v. State*, 74 Ark. App. 363, 47 S.W.3d 918 (2001); *Campbell v. State*, 74 Ark. App. 277, 279, 47 S.W.3d 915, 917 (2001)). The clerk of this court served Beare with a copy of his counsel’s brief and notified him of his right to file a pro se statement of points for reversal within thirty days. Beare has filed no statement.

In the no-merit brief, Beare’s counsel abstracts each of the rulings adverse to Beare and explains that the rulings are not meritorious grounds for reversal. However, we lack jurisdiction to address the issues raised in the no-merit brief because Beare has no right to a direct appeal from the judgment of acquittal. *Hughes v. State*, 2011 Ark. 147, at 4–5 (dismissing the appeal for lack of jurisdiction based on Arkansas Rule of Appellate Procedure–Criminal 1(a)¹ and Arkansas Code Annotated section 16-91-101(a),² holding that there is no right of direct appeal from a judgment of acquittal based on mental disease or defect because the “appellant was not *convicted* of a misdemeanor or felony”) (emphasis in original).

¹Rule 1(a) provides that “[a]ny person convicted of a misdemeanor or a felony by virtue of trial in any circuit court of this state has the right to appeal to the Arkansas Court of Appeals or to the Supreme Court of Arkansas.” Ark. R. App. P.–Crim. 1(a) (2018).

²Any person convicted of a misdemeanor or a felony by virtue of a trial in any circuit court of this state has the right of appeal to the Supreme Court. Ark. Code Ann. § 16-91-101(a) (Repl. 2016).

As in *Hughes*, Beare appealed from a judgment of acquittal—not a conviction for a misdemeanor or felony. Accordingly, we must dismiss the appeal due to lack of jurisdiction. *Hughes*, 2011 Ark. 147, at 5. Beare’s counsel’s motion to be relieved is granted. *Raijford*, 2012 Ark. App. 414, at 3.

Dismissed; motion to withdraw granted.

GRUBER, C.J., and KLAPPENBACH, J., agree.

Tyson K. Spradlin, for appellant.

One brief only.