

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-22-70

BENJAMIN CARTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 1, 2022

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. 70CR-19-149]

HONORABLE ROBIN J. CARROLL,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

MIKE MURPHY, Judge

The Union County Circuit Court revoked Benjamin Carter’s probation for violating the terms of his probation. Carter’s counsel filed a motion to be relieved and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), arguing that there is nothing in the record that would support an appeal. The clerk of this court provided Carter with a copy of his counsel’s brief and notified him of his right to file a pro se statement of points for reversal; no pro se points were filed. We affirm and grant counsel’s motion to withdraw.

On January 21, 2020, Carter pleaded guilty to delivery of a controlled substance, a Class C felony, and was sentenced to ten years’ probation. On October 13, 2020, Carter was arrested for domestic battery, criminal mischief, refusal to submit to arrest, and endangering the welfare of a minor. He pleaded guilty to refusal to submit to arrest, and he

was sentenced to ten days in the county jail. On December 27, 2020, he was arrested for battery, possession of a firearm by certain persons, terroristic act, aggravated assault, and possession of a controlled substance. The State filed and served a petition to revoke his probation on February 24, 2021, while he was incarcerated in the county jail.

The revocation hearing was continued three times, and the court found that there was reason for an excluded period for speedy-trial purposes each time. Carter moved to dismiss due to the continuances and a violation of his right to have a revocation hearing within sixty days of the service of his petition to revoke. The motion was denied, and the court conducted the revocation hearing on September 30, 2021.

Courtney Hayes, the probation officer for the Arkansas Division of Community Correction, testified that Carter violated six probation conditions. She testified that he failed to show proof of employment or enrollment in an educational course; failed to obey the law by getting arrested multiple times; possessed a firearm and a controlled substance at the December arrest; owes \$1075 in court costs and fees; and failed to obtain his GED or employment.

Carter testified that he is currently incarcerated for possession of a controlled substance. He admitted guilt to the refusal-to-submit-to-arrest charge, but he denied the other allegations against him.

At the end of the hearing, the court sentenced to Carter to ten years in the Arkansas Department of Correction.

A request to withdraw because the appeal is wholly without merit must be accompanied by a brief that contains a list of all rulings adverse to the appellant and an

explanation as to why each ruling is not a meritorious ground for reversal. Ark. Sup. Ct. R. 4-3(k)(1). The brief must contain 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 why each adverse ruling is not a meritorious ground for reversal. *Id.* Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160. Counsel contends that there are no issues of merit to support an appeal, and he has adequately explained why an appeal would be wholly frivolous.

We first address whether the evidence was sufficient to support the revocation. To revoke probation, the State must prove by a preponderance of the evidence that the defendant violated a condition of his probation. *Inman v. State*, 2022 Ark. App. 9, at 3. The State bears the burden of proof but only needs to prove that the defendant committed one violation of his conditions. *Id.* We will not reverse the circuit court's findings unless they are clearly against the preponderance of the evidence *Id.* Evidence that would not support a criminal conviction in the first instance may be enough to revoke probation. *Id.* Determining whether a preponderance of the evidence exists turns on the questions of credibility and weight to be given the testimony. *Id.*

The court found that Carter violated his probation with the entry of the certified conviction filed from the district court on his refusal to submit to arrest. Refusal to submit to arrest is a class B misdemeanor. Ark. Code Ann. § 5-54-103 (Repl. 2016). One of Carter's conditions was that he must "obey all federal and state laws, local ordinances, and court orders." Standing alone, this is a sufficient basis to revoke. *Riley v. State*, 2011 Ark. App.

511, 385 S.W.3d 355. Thus, we hold that there would be no merit to an appeal of the sufficiency of the evidence supporting the revocation.

Counsel addresses two other adverse rulings in his brief. Counsel moved to dismiss because the continuances violated Carter's right to have a hearing within sixty days pursuant to Arkansas Code Annotated section 16-93-307(b) (Repl. 2016). The court never expressly ruled on the motion, but Carter suffered no prejudice because he was being held on other charges. The purpose of the sixty-day requirement of Arkansas Code Annotated section 16-93-307(b) is to ensure that a defendant who has been arrested for violation of probation is not jailed for an unreasonable time awaiting his revocation hearing. *Givan v. State*, 2013 Ark. App. 701, at 2-3. A defendant who is incarcerated on another charge is not prejudiced if more than sixty days elapses before his revocation hearing. *Id.* Here, Carter was in custody for the charges connected with his December arrest. In that case, he had a bond of \$1 million that he had not made.

The final adverse ruling addressed by counsel was the circuit court's sentencing of Carter. The court found that he violated his probation based on the entry of the certified conviction of refusal to submit to arrest. The maximum sentence for a Class C felony is ten years' incarceration. Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2013). On a revocation of probation, the circuit court has the full range of punishment available to it upon finding the defendant has violated his probation. Ark. Code Ann. § 16-93-309(a)(5) (Supp. 2021). Upon revocation, the court sentenced Carter to a term of ten years' incarceration, which does not exceed the statutory maximum. Therefore, with respect to Carter's request for a lesser sentence, there could be no meritorious ground for appeal.

From our review of the record and the brief presented to us, we find compliance with *Anders* and Rule 4-3(k) and hold that the appeal is wholly without merit.

Affirmed; motion to withdraw granted.

GLADWIN and BARRETT, JJ., agree.

Andrew W. Best, for appellant.

One brief only.