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ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-21-455

RAY LEON TAYLOR, JR. APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered June 1, 2022 APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. 46CR-19-131] HONORABLE L. WREN AUTREY, JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

A Miller County jury convicted Ray Taylor of possessing less than two grams of methamphetamine and sentenced him to serve six years' imprisonment and to pay a $6000 fine. Pursuant to Arkansas Supreme Court Rule 4-3(b)(1)[1] and *Anders v. California*,[2] appellant's counsel has filed a motion to withdraw stating that there is no merit to an appeal. The motion is accompanied by a brief in which counsel explains why there is nothing in the record that would support an appeal. The clerk of this court served appellant with a copy of counsel's brief and notified him of his right to file a pro se points for reversal within thirty

[1](2021).

[2]386 U.S. 738 (1967).

days, but he has not done so. We affirm appellant's conviction and grant counsel's motion to withdraw.

Appellant was arrested in the early morning hours on January 31, 2019, after the truck in which he was a passenger was seen by officers of the Texarkana Arkansas Police Department being driven around railroad-track guardrails.[3] He was initially charged with possessing a Schedule I or Schedule II controlled substance, methamphetamine or cocaine over two grams but less than ten grams. This charge was subsequently amended to reflect that the amount possessed was less than two grams. He was also charged with possession of drug paraphernalia for methamphetamine or cocaine. Both charges included a habitual-offender enhancement.

A two-day jury trial took place in June 2021. The jury acquitted appellant of the possession-of-drug-paraphernalia charge but convicted him of possessing methamphetamine less than two grams and sentenced him, as a habitual offender, to serve six years' imprisonment and to pay a $6000 fine. A timely notice of appeal followed the July 16, 2021, sentencing order.

Rule 4-3(b)(1) requires the argument section of a no-merit brief to contain "a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests . . . with an explanation as to why each . . . is not a meritorious ground for reversal." The requirement for briefing every adverse ruling ensures that the due-process concerns in

[3]At the time of the stop, appellant had a search waiver on file.

Anders are met and prevents the unnecessary risk of a deficient *Anders* brief resulting in an incorrect decision on counsel's motion to withdraw.[4] Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings.[5] A no-merit brief in a criminal case that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(b)(1), and rebriefing will be required.[6]

The first adverse ruling was made during jury selection. The defense objected to the State striking Latres Watson, a potential juror. The circuit court heard arguments from the parties; the State tendered a racially neutral basis for its decision, and the circuit court overruled the objection. In *Batson v. Kentucky*,[7] the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the State from striking a venireperson as a result of racially discriminatory intent. The Court left it up to the states to develop specific procedures to follow in implementing *Batson*.[8] Our supreme court has established a three-step process to be used in evaluating *Batson* claims.[9] First, the opponent of the peremptory strike must

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[4]*Vail v. State*, 2019 Ark. App. 8.

[5]*T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160.

[6]*See Riley v. State*, 2019 Ark. 252.

[7]476 U.S. 79 (1986).

[8]*Id.*

[9]*MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998).

present facts that show a prima facie case of purposeful discrimination.[10] Second, if the opponent has established a prima facie case, the burden of producing a racially neutral explanation then shifts to the proponent of the strike.[11] In step three, if a race-neutral explanation is given, the circuit court must then decide whether the strike's opponent has proved purposeful discrimination.[12] During this stage, the strike's opponent must persuade the circuit court that the expressed motive of the striking party is not genuine, but rather is the product of discriminatory intent.[13] The opponent may do this by presenting further argument or other proof relevant to the inquiry.[14] If the strike's opponent chooses not to present additional argument or proof but simply relies on the prima facie case presented, then the circuit court has no alternative but to make its decision based on what has been presented to it, including an assessment of credibility.[15] The court in *MacKintrush* emphasized that "it is incumbent upon the strike's opponent to present additional evidence or argument, if the matter is to proceed further."[16] Here, appellant presented the circuit

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[10]*Id.*

[11]*Id.*

[12]*Id.*

[13]*Id.*

[14]*Id.*

[15]*Id.*

[16]*Id.* at 399, 978 S.W.2d at 297.

court with nothing more than his objection to the strike after the State provided a race-neutral basis for it. Additionally, the circuit court witnessed the same action by Ms. Watson that caused the State to strike her from the jury. The circuit court is accorded some deference in making *Batso*n rulings because it is in a superior position to observe the parties and to determine their credibility.[17] Counsel is correct that no meritorious ground for reversal exists in this situation.

The circuit court made four evidentiary rulings adverse to appellant during the jury trial. A circuit court has broad discretion in evidentiary rulings, and this court will not reverse a circuit court's ruling on the introduction of evidence unless the lower court has abused that discretion.[18] Counsel has explained why none of these rulings could support a meritorious basis for reversal of appellant's conviction.

The circuit court then denied appellant's motion for directed verdict regarding the possession-of-drug-paraphernalia charge. Counsel is correct in that even if the circuit court erred in denying appellant's motion, the jury subsequently acquitted appellant of that charge, and he was therefore not prejudiced by the circuit court's ruling.

The circuit court denied appellant's motion for a mistrial when Officer Kelly Pilgreen testified in the sentencing phase of the trial that appellant currently had three active warrants for his arrest. The circuit court struck Pilgreen's testimony and issued a curative instruction

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[17]*Id.*

[18]*Harris v. State*, 2021 Ark. App. 465, 635 S.W.3d 538.

to the jury to disregard his statements. A mistrial is a drastic remedy and should be declared when there has been an error so prejudicial that justice cannot be served by continuing the trial or when it cannot be cured by an instruction.[19] The grant or denial of a motion for mistrial lies within the sound discretion of the circuit court, and the exercise of that discretion should not be disturbed on appeal unless an abuse of discretion or manifest prejudice to the complaining party is shown.[20] Additionally, we have held that an admonition will usually remove the effect of a prejudicial statement unless the statement is so patently inflammatory that justice could not be served by continuing the trial.[21] Here, the circuit court concluded that the curative instruction was the best route because it did not believe that the jury was even aware of what Pilgreen had said as it took the circuit court some time to realize what had been stated. Additionally, even if the court erred in denying the motion, appellant was not prejudiced by it. Appellant was found guilty of possessing methamphetamine less than two grams and sentenced as a habitual offender to serve six years' imprisonment and to pay a $6000 fine. As a habitual offender, the maximum sentence he could receive was fifteen years with a maximum fine of $10,000. A defendant who has received a sentence within the statutory range short of the maximum sentence cannot show prejudice from the sentence.[22]

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[19]*Travis v. State*, 371 Ark. 621, 269 S.W.3d 341 (2007).

[20]*King v. State*, 298 Ark. 476, 769 S.W.2d 407 (1989).

[21]*Kimble v. State*, 331 Ark. 155, 959 S.W.2d 43 (1998).

[22]*See Thomas v. State*, 2020 Ark. App. 357, 605 S.W.3d 261.

Finally, the circuit court denied appellant's motion for a new sentencing phase. Although the circuit court verbally denied the motion, there is nothing in the record to suggest that it entered an order to that effect. Additionally, appellant failed to amend his notice of appeal to include the circuit court's denial. Therefore, it is not preserved for our review.

From our review of the record and the brief presented to us, we agree with counsel that the adverse rulings in this case present no meritorious ground for reversal. Therefore, we affirm appellant's conviction and grant counsel's motion to withdraw.[23]

Affirmed; motion to withdraw granted.

ABRAMSON and KLAPPENBACH, JJ., agree.

Phillip A. McGough, P.A., by: *Phillip A. McGough*, for appellant.

One brief only.

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[23]We note that counsel did not discuss the sufficiency of the evidence to support appellant's conviction or alert us to the fact that a sufficiency argument is not preserved. Counsel failed to move for a directed verdict on the charge during trial; therefore, sufficiency is not preserved. As such, there is no adverse ruling to review. *See Ludwick v. State*, 2021 Ark. App. 347, 635 S.W.3d 330.