

Cite as 2023 Ark. App. 1
ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-22-179

ANTONIO HOLLIMAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 18, 2023

APPEAL FROM THE ARKANSAS
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. 01SCR-21-181]

HONORABLE DONNA
GALLOWAY, JUDGE

REBRIEFING ORDERED;
MOTION TO WITHDRAW
DENIED

BRANDON J. HARRISON, Chief Judge

A jury found Antonio Holliman guilty of rape, and he was sentenced to thirty years' imprisonment. Holliman's attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Arkansas Supreme Court Rule 4-3(b)(1) (2022) and *Anders v. California*, 386 U.S. 738 (1967), asserting that this appeal is wholly without merit. The clerk of this court mailed a copy of counsel's motion and brief to Holliman's last-known address informing him of his right to file pro se points for reversal, which he has done. Consequently, the attorney general has filed a brief in response. We deny the motion to withdraw and order rebriefing.

In November 2018, the State charged Holliman with committing the offense of rape by engaging in sexual intercourse or deviate sexual activity with a person who was less than

fourteen years of age. In August 2021, the circuit court convened a jury trial, and the State presented evidence that Holliman had raped his girlfriend's three-year-old niece. The jury found Holliman guilty of rape and recommended a sentence of thirty years' imprisonment. The court accepted the recommendation and sentenced Holliman accordingly. Holliman timely appealed the circuit court's 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 test is not whether counsel thinks the circuit court committed no reversible error but whether the points to be raised on appeal would be wholly frivolous. *T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160. Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *Id.* 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. *Jester v. State*, 2018 Ark. App. 360, 553 S.W.3d 198.

In his argument, counsel addresses the sufficiency of the evidence supporting Holliman's conviction as well as six additional rulings potentially adverse to Holliman. However, a review of the record reveals at least two adverse rulings that counsel has failed to address. At a pretrial hearing on 7 October 2019, defense counsel asked that certain time not be tolled for speedy-trial purposes, and that request was denied. At a bond-reduction hearing convened on 4 November 2020, the defense's motion to reduce Holliman's bond was denied. Holliman's counsel has failed to explain why these adverse rulings would not

be meritorious grounds for reversal on appeal; therefore, rebriefing is required. *Jester, supra*.

Counsel should carefully examine the record and review the rules before filing a substituted brief within fifteen days of this opinion. If a no-merit brief is filed, counsel's motion and brief will be forwarded by this court's clerk to Holliman so that he can raise any points he chooses. The Attorney General's Office will also be given the opportunity to file a responsive brief for the State if it so chooses. Holliman and the State may elect to stand on the original pro se points and responsive brief in this case.

Rebriefing ordered; motion to withdraw denied.

HIXSON and BROWN, JJ., agree.

Wesley Rhodes, for appellant.

Leslie Rutledge, Att'y Gen., by: *David L. Eanes, Jr.*, Ass't Att'y Gen., for appellee.