

Cite as 2023 Ark. App. 3  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CR-21-577

SAMUEL HERRINGTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 18, 2023

APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT  
[NOS. 43CR-20-376 & 43CR-19-231]

HONORABLE BARBARA ELMORE,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**RAYMOND R. ABRAMSON, Judge**

Samuel Herrington appeals the Lonoke County Circuit Court order revoking his probation and sentencing him to forty-eight months in the Arkansas Department of Correction. Herrington’s counsel has filed a motion to withdraw pursuant to *Anders v. California*, 36 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), contending that there are no issues of arguable merit to raise on appeal. In addition, the clerk of our court notified Herrington of counsel’s motion and brief and advised him of his right to file pro se points; however, he did not avail himself of the opportunity.

On November 21, 2019, Herrington pled guilty to failure to comply with registration and reporting requirements of a sex offender in violation of Arkansas Code Annotated section 12-12-904 (Supp. 2021), and the circuit court sentenced Herrington to a seventy-two-

month term of probation. On July 17, 2020, the State filed a petition to revoke Herrington's probation, alleging that Herrington illegally possessed a controlled substance and tested positive for amphetamines, methamphetamine, and marijuana. On August 17, 2021, the State amended its petition to revoke to add that Herrington had failed to report to his probation officer in July 2020.

As for the possession-of-a-controlled-substance allegation in the petition, Herrington was charged separately for that offense in case No. 43CR-20-376. He waived his right to a jury trial in case No. 43CR-20-376 and was tried by the circuit court. At the conclusion of the bench trial, the circuit court found that the proof did not meet the beyond-a-reasonable-doubt standard and found him not guilty. Case No. 43CR-20-376 and the revocation currently on appeal, case No. 43CR-19-231, were tried separately. However, Herrington agreed that the court could rely on the testimony and evidence presented at the trial in case No. 43CR-20-376 in the subsequent revocation hearing in case No. 43CR-19-231 that was held on August 30, 2021.

At that revocation hearing, Probation and Parole Officer Brandy Lewis-Graham testified that Herrington tested positive for amphetamines, methamphetamine, and marijuana on May 18, 2020. Lewis-Graham further testified that Herrington failed to appear for his scheduled appointment on July 24, 2020. At the conclusion of the hearing, the circuit court found that Herrington had violated the terms and conditions of his probation by testing positive for a controlled substance and failing to report to probation. The court

sentenced him to forty-eight months' imprisonment in the Arkansas Department of Correction. His timely no-merit appeal is now properly before us.

In a no-merit appeal, counsel is required to list all rulings adverse to appellant and to explain why each adverse ruling does not present a meritorious ground for reversal. *Anders, supra*. 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. *Honey v. State*, 2020 Ark. App. 496. Pursuant to *Anders, supra*, we are required to fully examine all the proceedings to determine whether the case is wholly frivolous. *Williams v. State*, 2021 Ark. App. 164.

In probation-revocation proceedings, the State has the burden of proving by a preponderance of the evidence that a probationer violated the terms of his or her probation as alleged in the revocation, and we will not reverse the circuit court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Dawson v. State*, 2016 Ark. App. 558. The State need only show that the defendant committed one violation to sustain a revocation. *Id.* The appellate court will not reverse the circuit court's findings unless they are clearly against the preponderance of the evidence. *Vangilder v. State*, 2018 Ark. App. 384, at 4, 556 S.W.3d 534, 537. Whether a preponderance of the evidence exists turns on questions of credibility and weight to be given to the testimony. *Id.*

Here, Herrington's probation officer, Lewis-Graham, testified that Herrington tested positive for amphetamine, methamphetamine, and marijuana while under her supervision. She further testified that he missed an appointment with her on July 24, 2020. That unrefuted testimony was sufficient to establish by a preponderance of the evidence that

Herrington had committed at least one violation of his probation. Thus, the circuit court's finding that he inexcusably violated a condition of his probation was not clearly against the preponderance of the evidence.

Counsel also adequately explains that the sentence imposed by the circuit court was within the statutory range set out for a violation of Arkansas Code Annotated section 12-12-904, a class C felony. The maximum sentence for a Class C felony shall not exceed ten years. *See Ark. Code Ann. § 5-4-401(a)(4)* (Repl. 2013). Upon revocation, the circuit court sentenced Herrington to a term of four years' incarceration, which does not exceed the statutory maximum. Therefore, the circuit court did not err in sentencing Herrington, and we agree with counsel that there is no basis for a meritorious appeal on this issue.

Finally, counsel addresses how the circuit court did not abuse its discretion in admitting a copy of Herrington's signed pretrial conditions over Herrington's relevancy objection. 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. *Harris v. State*, 2021 Ark. App. 465, 635 S.W.3d 538. Counsel is correct that this adverse ruling could not support a meritorious basis for reversal.

Having reviewed the record and counsel's brief, we find compliance with the requirements of Rule 4-3(k) and agree with counsel that an appeal in this case would be wholly without merit. Counsel's brief adequately addresses the sufficiency of the evidence supporting the revocation of Herrington's probation and sentence as well as the only other

adverse evidentiary ruling rendered below. We therefore affirm the revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

VIRDEN and KLAPPENBACH, JJ., agree.

*Robert M. "Robby" Golden*, for appellant.

One brief only.