

Cite as 2023 Ark. App. 285
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-21-255

JODECI NASH

APPELLANT

Opinion Delivered May 17, 2023

V.

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. 63CR-16-154]

STATE OF ARKANSAS

APPELLEE

HONORABLE BRENT HOUSTON,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

RAYMOND R. ABRAMSON, Judge

This is a no-merit appeal filed on behalf of Jodeci Nash following the Saline County Circuit Court’s revocation of his probation. Nash’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(b) (2021), along with a motion to withdraw as counsel asserting that there is no issue of arguable merit on appeal.¹ The clerk of this court sent Nash a copy of his counsel’s brief and a motion to inform him of his right to file pro se points for reversal. He did not file pro se points. From our review of the record and the brief presented, we find that counsel’s brief is in compliance with the directives of *Anders* and the

¹This is the second time this no-merit appeal has been before this court. In the first appeal, we held that Nash’s counsel’s brief failed to comply with Arkansas Supreme Court Rule 4-3(b) and ordered rebriefing. *Nash v. State*, 2023 Ark. App. 2.

requirements of Rule 4-3 and that there are no issues of arguable merit to support an appeal. Accordingly, we affirm the revocation of Nash's probation and grant counsel's motion to withdraw.

On April 17, 2017, Nash pled guilty to false imprisonment and third-degree domestic battery, and the court sentenced him to forty-eight months' probation for false imprisonment and twelve months' probation for domestic battery.

On February 2, 2018, the State moved to revoke Nash's probation, alleging that Nash had committed new offenses and had failed to pay court costs and fines. On January 31, 2019, the State amended its petition to revoke Nash's probation, and on October 8, 2020, the State filed a second amended petition. In the second amended petition, the State alleged that Nash had committed new criminal offenses; tested positive for alcohol, amphetamine, and marijuana; failed to report; failed to notify his probation officer of a change of address; failed to pay supervision fees, fines, and court costs; failed to complete a domestic-battery course; and failed to complete community service.

On January 12, 2021, the court held a revocation hearing. Eva Jansen testified that she is employed with the Arkansas Division of Community Correction and that she has access to Nash's probation records. She stated that Nash tested positive for alcohol and amphetamine on June 20, 2018, and for amphetamine and marijuana on July 2, 2018. She further testified that Nash failed to report to his probation officer on July 16, October 2, November 20, and December 7, 2018, and that he failed to appear in the Saline County District Court on July 17, 2018. She testified that on January 8, 2019, officers conducted a

home visit at Nash's listed address, and the owner stated that Nash had not lived there for more than five months. Jansen also testified that Nash is three hundred dollars in arrears for his supervision fees and that as of August 19, 2020, Nash had not shown proof of completion of community service or a domestic-battery course. Jansen also stated that Nash has been incarcerated since August 16, 2020.

Sergeant Raymond Keech testified that he detained and questioned Nash concerning a victim's complaint of assault with a weapon on August 15, 2020. Keech testified that he located a vape vial that he believed to contain THC on Nash, and he further testified that Nash removed his face covering and coughed in Keech's face.

Corporal Brandon Gunn testified that he works as a detention corporal and that on August 22, 2020, Nash kicked him and then punched Deputy Tony Curtis Thompson. Deputy Thompson testified that Nash "struck" him in the head.

Nash testified and acknowledged that he had failed to comply with the terms and conditions of his probation, including possessing a firearm. At the conclusion of the hearing, the court found that Nash had committed multiple violations of his probation, and it sentenced him to sixty months' imprisonment with jail-time credit. This no-merit appeal followed.

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(b)(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 as to why each adverse ruling is not a meritorious ground for reversal. *Id.* In deciding whether to allow counsel to withdraw from appellate representation, 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. *Brown v. State*, 2018 Ark. App. 367, 553 S.W.3d 787. 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.

Nash's counsel alleges that there would be no merit to an appeal from the revocation, and we agree. To revoke probation, the State must prove by a preponderance of the evidence that the defendant violated a condition of his probation. *Stewart v. State*, 2021 Ark. App. 289, 624 S.W.3d 357. We will not reverse the circuit court's findings unless they are clearly against the preponderance of the evidence. *Id.* Determining whether a preponderance of the evidence exists turns on questions of credibility and weight to be given to the testimony. *Id.* Here, the undisputed testimony showed that Nash committed multiple violations of his probation, and Nash admitted having violated his probation. We thus hold that there would be no merit to an appeal of the sufficiency of the evidence supporting the revocation.

Counsel also correctly notes that the only other adverse ruling concerned an evidentiary objection. Specifically, during Nash's testimony about issues with his current confinement, the State objected on the basis of relevancy, and the court agreed and asked Nash to move along. 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. *Williams v. State*, 2011 Ark. App. 675, 386 S.W.3d 609. We agree with Nash's counsel that the ruling could not support a meritorious basis for reversal.

From our review of the record and the brief presented to us, we conclude there is compliance with *Anders* and Rule 4-3(b) and that there is no nonfrivolous argument that could serve as the basis for an appeal. Thus, we affirm and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

HARRISON, C.J., and VIRDEN, J., agree.

Jones Law Firm, by: *F. Parker Jones III* and *Vicram Rajgiri*, for appellant.

One brief only.