

Cite as 2023 Ark. App. 316
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-22-269

MARTHA HUGHES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 31, 2023

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT
[NO. 30CR-19-43]

HONORABLE EDDY R. EASLEY,
JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING IN MERIT FORMAT
ORDERED

RAYMOND R. ABRAMSON, Judge

Following a one-day jury trial, Martha Hughes was convicted by a Hot Spring County Circuit Court jury of possession of methamphetamine with purpose to deliver, possession of drug paraphernalia (scales), and possession of drug paraphernalia (glass pipes). She was acquitted of a simultaneous-possession-of-drugs-and-firearms charge. Hughes was sentenced to a total of forty-six years' imprisonment, and a notice of appeal was timely filed.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) (2020) of the Rules of the Arkansas Supreme Court and Court of Appeals, Hughes's counsel has filed a motion to withdraw accompanied by an abstract, addendum, and brief purporting to set forth all adverse rulings in this case and contending that there are no meritorious grounds

for appeal.¹ The clerk of this court mailed a certified copy of counsel's motion and brief to Hughes in accordance with Supreme Court Rule 4-3(k)(2), informing her of her right to file pro se points for reversal. Hughes filed no points. We deny counsel's motion to withdraw and order rebriefing in adversary form.

An attorney attempting to withdraw from a criminal appeal must list every adverse ruling and explain how each ruling could provide no meritorious ground for reversal. *Weaver v. State*, 2013 Ark. App. 310. Even a single omission from a no-merit brief necessarily requires rebriefing. *Id.*

In considering a no-merit brief, the court of appeals must determine whether, after a full examination of the proceedings, there is any nonfrivolous reason for appeal. *Parmer v. State*, 2017 Ark. App. 5, at 5 (citing *Anders, supra*). A no-merit brief must provide a "full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous." *Reed v. State*, 2013 Ark. App. 432, at 3, (citing *Wakeley v. State*, 2012 Ark. App. 448, at 2-3). Arkansas Supreme Court Rule 4-3(k)(1) requires that a no-merit argument address and discuss all adverse rulings made by the circuit court on the defendant's objections, motions,

¹We note that Hughes's counsel tendered the record on June 18, 2020. On December 17, 2020, the Supreme Court of Arkansas in 2020 Ark. 421 provided: "These rule changes shall take effect immediately and require, among other things, that appeal records and other case-initiating documents be filed electronically. However, we recognize that there are cases in which the circuit clerks and court reporters are likely in the process of preparing some appeal records in paper format. Therefore, we authorize the clerk of this court to accept for filing conventional paper appeal records when the notice of appeal is filed prior to June 1, 2021, but the briefs in those cases must include an abstract and an addendum. For all cases in which the notice of appeal is filed on or after June 1, 2021 (except for cases in which the appellant is proceeding pro se), the record shall be filed in electronic format."

and requests and explain “why each adverse ruling is not a meritorious ground for reversal.” *Reed*, 2013 Ark. App. 432, at 3-4.

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. There are arguably adverse rulings in the record that are not adequately briefed in the case before us.

Counsel asserts there were four adverse rulings and attempts to brief them, but we find his arguments deficient. We specifically note that the sufficiency argument fails to address the argument made in the directed-verdict motion and does not adequately explain why an appeal based on that motion would be without merit.

Moreover, while counsel notes the issue with Hughes’s son contacting one of the jurors via Facebook Messenger, we are not convinced that an appeal of this issue would be wholly without merit. When an appeal is submitted to this court under Rule 4-3(k) and we believe that an issue is not wholly frivolous, we are required to deny appellant’s counsel’s motion to withdraw and order rebriefing in adversary form. *Runion v. State*, 2012 Ark. App. 30, at 4; *Tucker v. State*, 47 Ark. App. 96, 98, 885 S.W.2d 904, 905 (1994). Because Hughes’s counsel fails to demonstrate that an appeal would be wholly frivolous, we direct counsel to file a brief in adversarial format discussing this issue and any others that counsel may deem appropriate. The State will then have the opportunity to file a response brief. The clerk is directed to reset the briefing schedule.

Motion to withdraw denied; rebriefing in merit format ordered.

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

Jeremy D. Wann, for appellant.

One brief only.