

Cite as 2023 Ark. App. 345
ARKANSAS COURT OF APPEALS
DIVISION III
No. CR-22-144

MICHAEL DEWAYNE CARR
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 31, 2023

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. 22CR-20-243]

HONORABLE CREWS PURYEAR,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WAYMOND M. BROWN, Judge

A Drew County jury convicted appellant Michael Carr of possession of 10 grams or more, but less than 200 grams, of methamphetamine with the purpose to deliver and sentenced him as a habitual offender to sixty years' imprisonment. 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

¹(2021).

²386 U.S. 738 (1967).

him of his right to file pro se points for reversal within thirty days, but he had not done so. We affirm appellant's conviction and grant counsel's motion to withdraw.

Appellant was arrested on November 19, 2020, after Sheriff Mark Gober with the Drew County Sheriff's Office stopped a vehicle in which appellant was a passenger. The driver of the vehicle, John Mann, had an active warrant for his arrest. Appellant had suspected marijuana in his pocket and had a container that he shook from his pants leg that contained suspected methamphetamine. He was arrested for possession of drugs. A search of his home turned up a bag with more suspected methamphetamine, a 9mm pistol, a scale with residue, a bullet, lighters, plastic spoons, and other items. He was subsequently charged with possessing more than 10 grams, but less than 200 grams, of methamphetamine with purpose to deliver; simultaneous possession of drugs and firearms; possession of drug paraphernalia; and being a felon in possession of a firearm.

Appellant's jury trial took place on July 20, 2021. Sheriff Gober testified that he was driving in Wilmar, Arkansas, on November 19, 2020, when he saw Mann and others standing outside. He stated that when he turned around, Mann, his vehicle, and the other people he saw were gone. He said that Mann had an active bench warrant for his arrest. He testified that he sped up, and when he made it to Monticello, he saw Mann's vehicle ahead of him. He said that he turned his blue lights on while on Hyatt Street, but it took Mann some time before he stopped. He stated that Mann finally pulled into a driveway near the area of Shay Gillespie Drive. He said that he called for backup and had both Mann and appellant exit the vehicle and that he placed restraints on them. He said that he patted down

appellant while someone else patted Mann down. Sheriff Gober testified that he found about 2.5 grams of marijuana in appellant's pocket and that appellant and Mann sat on the grass. He said that when he told the men that they would face additional charges if they had anything illegal on them when they made it to the jail, appellant got up and called him over, and the two of them walked off. He stated that appellant shook his pants leg, and a small purple and black container fell to the ground. The container had eight small bags of suspected methamphetamine. Seven of the bags weighed 3.5 grams and one bag weighed 2.5 grams. At some point, appellant was taken from jail and placed in a sheriff's pickup truck so that his residence, located at 927 Lacey New Hope Road in Monticello, could be searched. Detective Rick Harvey found a black bag in an access panel in the hall. The bag contained several large bags of suspected methamphetamine, which weighed 133 grams, and there were seven small bags that weighed about 3.5 grams. He said that a 9mm pistol and a scale with residue were also found in the bag. He said that a marijuana grinder was found in the residence.

Chris Austin, a deputy with the Drew County Sheriff's Office, testified that he helped search appellant's residence on November 19 and that he also searched an outbuilding located on the property and found a .22-caliber rifle. However, he stated that the outbuilding did not look occupied.

Chief Deputy Sheriff Brian Slaughter testified that he was the first to arrive at appellant's residence and that no one was in the home at that time. He stated that Detective

Harvey had to retrieve appellant's keys from the sheriff's office to unlock the door of the residence. He said that he sat with appellant while the residence was being searched.

Detective Harvey testified that he is a criminal investigator with the Drew County Sheriff's Office. He said that he was involved in the search of appellant's residence on November 19. He stated that he had to go to the sheriff's office to pick up appellant's keys so that they could gain entrance into the residence. He testified that he was the one who removed the access panel and found the black bag. He said that in addition to the large items found in the bag, several small items were found, including lighters, ink pens, plastic spoons, a bullet, and some change. He said that the bullet was not in the gun. He stated that he submitted all the evidence to the Arkansas State Crime Laboratory (crime lab).

On cross-examination, Detective Harvey stated that the items were submitted to the crime lab so that they could be tested. He said that any items that were not sent to the crime lab remained in the evidence locker at the sheriff's office. On recall, he stated that the 9mm pistol was not loaded when he found it in the bag.

Megan Peters, a forensic chemist at the crime lab, testified that she ran tests on certain items of evidence in this case to determine the presence or absence of controlled substances. She stated that she did not test all the items submitted for testing. She said that she tested a white crystalline substance weighing 103.1 grams that contained methamphetamine; however, she did not test the white crystalline substance that weighed 26.7802 grams.

On cross-examination, Peters stated that she only performs drug analysis, she does not perform toolmark examinations.

At the conclusion of the State’s case, appellant made directed-verdict motions for simultaneous possession of drugs and firearms and possession of drug paraphernalia. The circuit court granted the motion for simultaneous possession but denied the motion for drug paraphernalia. The defense did not put on evidence, but appellant unsuccessfully renewed his motion for directed verdict for his possession-of-drug-paraphernalia charge. The jury convicted appellant of possession of more than 10 grams, but less than 200 grams, of methamphetamine with purpose to deliver; however, it acquitted appellant of the possessing-drug-paraphernalia charge. After the verdict, the jury was then instructed on the charge of possession of firearms by certain persons. They subsequently acquitted him of that charge. The jury sentenced appellant to sixty years’ imprisonment. The sentencing order was filed on July 22, 2021. Appellant filed a timely notice of appeal on August 13.

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 *Anders* are met and prevents the unnecessary risk of a deficient *Anders* brief resulting in an incorrect decision on counsel’s motion to withdraw.³ Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the

³*Vail v. State*, 2019 Ark. App. 8.

proceedings.⁴ 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.⁵

The first adverse rulings came during jury selection. The court struck juror 48 because the juror is appellant's second cousin, and the defense objected. In Arkansas, our statute implies bias when a juror is related to either a party or to counsel for either party within the fourth degree of consanguinity or affinity.⁶ However, if the parties consent, the prospective juror can nevertheless serve.⁷ Here, the State did not consent to appellant's cousin serving as a juror; therefore, it was not erroneous for the circuit court to strike him. Also, during jury selection, the defense attempted to strike juror 14 for cause because he had once worked for the Drew County Sheriff's Office under Sheriff Gober. The circuit court denied the request. The defense subsequently used one of its peremptory strikes to remove him. Therefore, appellant got what he wanted. One cannot complain about being granted the relief one sought.⁸

Another adverse ruling was made when the circuit court denied appellant's directed-verdict motion for possession of drug paraphernalia. However, appellant was not prejudiced by this ruling because the jury subsequently acquitted him of that charge.

⁴*T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160.

⁵*See Riley v. State*, 2019 Ark. 252.

⁶Ark. Code Ann. § 16-31-102(b)(1) (Supp. 2021).

⁷*Id.*

⁸*Parker v. State*, 302 Ark. 509, 790 S.W.2d 894 (1990).

Before the jury deliberated on whether appellant was guilty of being a felon in possession of firearms, the State sought to publish one of appellant's convictions to the jury. The defense objected, but the circuit court stated that the State could put its proof on. The defense stated that it had a problem with the State publishing the conviction to the jury but said that it had no problem with the State admitting the conviction for record purposes. The State agreed to do just that, so appellant got what he wanted.

During closing arguments, the State mentioned that appellant was on parole, and the defense objected. The circuit court overruled the objection upon finding that the exhibits that were already introduced showed that he was on parole. Appellant did not object to the admission of the evidence, and the State's closing argument was merely cumulative of evidence already admitted. The defense also objected to exhibits that showed appellant's prior convictions going into the jury room. The circuit court noted the objection but allowed the evidence to go to the jury. Appellant was being charged as a habitual offender, and counsel is correct that the State was entitled to introduce evidence of appellant's seven prior convictions to support such a sentence since it was the State's burden to prove appellant's prior convictions under the statute. Additionally, prior convictions are admissible during sentencing.⁹

Although appellant was convicted of possession of more than 10, but less than 200 grams, of methamphetamine with purpose to deliver, this is not an adverse ruling that is

⁹Ark. Code Ann. § 16-97-103 (Repl. 2016).

properly before us because, as counsel correctly states, appellant failed to make a directed-verdict motion for this charge. Therefore, the sufficiency-of-the-evidence argument is not preserved.¹⁰

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 convictions and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

HIXSON and MURPHY, JJ., agree.

Terrence Cain, for appellant.

One brief only.

¹⁰See *Baker v. State*, 2011 Ark. App. 480.