

Cite as 2023 Ark. App. 490
ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-23-79

RHONDA LYNN HOGUE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 1, 2023

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. 22CR-21-277]

HONORABLE ROBERT B. GIBSON III,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW DENIED

ROBERT J. GLADWIN, Judge

Rhonda Lynn Hogue (Hogue) appeals the revocation of her probation in the Drew County Circuit Court. Her counsel filed a motion to withdraw and no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2023) asserting that there is no issue of arguable merit to raise on appeal. Hogue was provided a copy of her counsel’s brief and motion, but she did not file any pro se points for reversal; thus, the State did not file a responsive brief. We deny counsel’s motion to withdraw and order that a merit brief be filed.

I. *Background Facts*

On August 15, 2022, Hogue entered a negotiated plea of guilty to the felony offenses of second-degree battery and tampering with physical evidence. On the same day, the circuit

court signed both the order and the conditions of supervised probation. Hogue also signed and agreed to the conditions of probation on August 15. The guilty plea and order and conditions of supervised probation were filed of record on August 17. The conditions included that Hogue was required within seventy-two hours to contact her probation intake officer to complete the required paperwork, obtain reporting instructions, and provide a DNA sample. On August 18, the sentencing order was filed of record.

On August 31, the State filed a revocation petition alleging that Hogue had violated a condition of her probation. A violation report was attached to the petition stating that on August 17, Hogue failed to report as directed; thus, she had violated a condition of her supervised probation. Specifically, the report stated that Hogue was given an intake appointment for 9:30 a.m. on August 17. Importantly, we note that the alleged violation took place at 9:30 a.m. on August 17; the order and conditions of probation were filed at 10:00 a.m. on August 17; and the sentencing order was filed on August 18.

A revocation hearing was held on October 31, and the court found that Hogue had violated the condition of her probation to report for intake within seventy-two hours. Further, the circuit court noted that Hogue did not appear before the court until nearly a month after a warrant for absconding had been issued. Consequently, the court sentenced Hogue to sixty months in the Arkansas Department of Correction with an additional sixty-month suspended imposition of sentence (SIS). The sentencing order was filed on November 2. Hogue filed a timely notice of appeal on November 11. On March 19, 2023, counsel filed a no-merit brief and a motion to be relieved as appellate counsel .

II. *Standard of Review*

A request to withdraw on the ground that the appeal is wholly without merit must be accompanied by a brief containing 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. Ark. Sup. Ct. R. 4-3(b)(1). 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. *Moore v. State*, 2022 Ark. App. 5. 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. *Miller v. State*, 2021 Ark. App. 229.

III. *Discussion*

Counsel contends that he has thoroughly reviewed the record and found no error to support an appeal of Hogue's probation revocation. The three adverse rulings identified by counsel are as follows: (1) the circuit court was correct in finding by a preponderance of the evidence that Hogue had violated the terms and conditions of her probation; (2) the circuit court did not abuse its discretion in overruling defense counsel's objection to the State's raising a violation not listed in the petition to revoke; and (3) the circuit court did not abuse its discretion in denying Hogue's oral request that he be sentenced to a continued term of probation. Our review of the transcript reveals that counsel addressed all the adverse rulings

as required by *Anders* and properly analyzed his reasoning as to why each ruling does not amount to reversible error. However, in light of our recent precedent in *Townsend v. State*, 2023 Ark. App. 356, ___ S.W.3d ___, and *Burnett v. State*, 2018 Ark. App. 220, we cannot say that this appeal is wholly without merit.

In *Townsend*, this court reversed and dismissed appellant's SIS revocation because it was based on alleged violations that occurred prior to entry of the sentencing order. We held that while *Townsend's* SIS commenced upon pronouncement in the courtroom, it could not be revoked unless the sentencing order was entered of record. 2023 Ark. App. 356, at 6, ___ S.W.3d at ___. Similarly, in *Burnett*, this court held that the circuit court erred by revoking *Burnett's* probation for conduct that occurred before probation was imposed. Specifically, *Burnett* failed to appear before her probation officer on December 22, 2016, at 10:00 a.m.; however, the judgment was entered later that day at 4:07 p.m. 2018 Ark. App. 220, at 3-4. Accordingly, *Burnett's* revocation was reversed and dismissed.

IV. Conclusion

For the reasons set forth above, we deny counsel's motion to withdraw and order rebriefing.

Rebriefing ordered; motion to withdraw denied.

VIRDEN and BARRETT, JJ., agree.

Potts Law Office, by: Gary W. Potts, for appellant.

One brief only.