Cite as 2024 Ark. App. 11

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-23-119

	Opinion Delivered January 17, 2024
JAMES EARL HARRIS APPELLANT	APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. 73CR-20-415]
V.	HONORABLE MARK PATE, JUDGE
STATE OF ARKANSAS APPELLEE	REBRIEFING ORDERED; MOTION TO WITHDRAW DENIED

BRANDON J. HARRISON, Chief Judge

A jury found James Earl Harris guilty of four counts of first-degree sexual assault, and he has appealed his convictions. Harris's attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Arkansas Supreme Court Rule 4-3(b)(1) (2023) and *Anders v. California*, 386 U.S. 738 (1967), asserting that this appeal is wholly without merit. The clerk of this court mailed a copy of counsel's motion and brief to Harris's last-known address informing him of his right to file pro se points for reversal, but he has not done so. We deny counsel's motion to withdraw and remand for rebriefing.

In July 2020, the State charged Harris with one count of rape, four counts of first-degree sexual assault, and one count of second-degree sexual assault. The State alleged that he committed rape and second-degree sexual assault against his biological daughter, MC, and four counts of first-degree sexual assault against his ex-wife's cousin, Sydney Gogus,

when she was a minor.[1]

The circuit court held a jury trial in July 2022. Pertinent to this appeal, the State presented testimony from Lauren Goodson, Harris's ex-wife, who explained that when Gogus was approximately fourteen years old, she frequently stayed with her and Harris. Harris and Gogus were close, but around the time she turned sixteen, she stopped staying over. Goodson thought it was because Gogus was getting older and wanted to hang out with her friends.

Gogus testified that she and Goodson had grown up together and were like sisters. She often stayed with Goodson and her husband, Harris, when she was between ten and thirteen years of age. She and Harris were close, and she went to him for advice about boys and other matters. When she was thirteen, he approached her during the night, began touching her, took her clothes off, and put his penis into her vagina. He later told her not to tell anyone or it would ruin the family. After that incident, Gogus would ask if Harris would be home before she would agree to spend the night with Goodson. However, Harris would sometimes arrive home unexpectedly; on one of those nights, Harris forced her to perform oral sex, performed oral sex on her, had vaginal sex with her, and attempted anal sex with her. There was one other instance in which Harris forced her to have vaginal sex and anal sex; after that, she stopped staying overnight.

At the close of the State's case, the defense did not move for a directed verdict. Harris testified and denied that anything inappropriate ever happened between him and Gogus.

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[1]The circuit court later declared a mistrial on the counts of rape and second-degree sexual assault, and they are not at issue in this appeal.

He suggested that Gogus fabricated the allegations to bolster MC's allegations.

The jury found Harris guilty on three counts of first-degree sexual assault, and he was sentenced to sixty years' imprisonment. Harris has timely appealed his convictions.

Rule 4-3(b)(1) requires that the argument section of a no-merit brief 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 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. *T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160. Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *Id*. 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. *Vail v. State*, 2019 Ark. App. 8.

Counsel explains that challenging the sufficiency of the evidence supporting Harris's convictions is not a meritorious ground for reversal because (1) defense counsel did not make a directed-verdict motion below, so there is no argument challenging the sufficiency of the evidence preserved for appellate review; and (2) Gogus's testimony provided sufficient evidence to support the convictions because under Arkansas law, the testimony of a victim is sufficient evidence in a sexual-assault case. *See Bahena v. State*, 2023 Ark. App. 261, 667 S.W.3d 553 (a sexual-assault victim's testimony may constitute substantial evidence to sustain a conviction for sexual assault).

Counsel also explains that the twenty-year sentence that Harris received for each

conviction is within the statutory limits for first-degree sexual assault (six to thirty years' imprisonment) and that the circuit court's decision to run Harris's sentences consecutive was solely within its discretion. *See Doster v. State*, 2020 Ark. App. 456, 610 S.W.3d 685 (whether sentences should be run consecutively or concurrently is within the sole discretion of the circuit court, and exercise of that discretion will not be reversed on appeal unless there is an abuse of that discretion). Therefore, Harris's sentencing does not provide meritorious grounds for reversal.

Unfortunately, there is one adverse ruling that counsel has failed to address. Harris's trial lasted three days, and at the end of the second day, he had been found guilty but not yet sentenced. Defense counsel asked if Harris could "stay out one more night and see his kids," but the court denied the request and ordered that Harris be taken into custody. This is clearly a ruling adverse to Harris, but counsel did not identify it in the appellate brief or explain why it does not present a meritorious ground for reversal. For this reason, we remand for rebriefing and deny the motion to withdraw.

Rebriefing ordered; motion to withdraw denied.

GLADWIN and HIXSON, JJ., agree.

Debra Reece Johnson, for appellant.

One brief only.