

Cite as 2024 Ark. App. 14  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CR-23-388

DANIEL HERNANDEZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 17, 2024

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT [NOS. 66FCR-19-577  
& 66FCR-19-600]

HONORABLE STEPHEN TABOR,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**BART F. VIRDEN, Judge**

This is a no-merit appeal filed on behalf of appellant Daniel Hernandez following the Sebastian County Circuit Court’s revocation of his suspended sentences. Hernandez’s counsel has filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(b)(1), along with a motion to withdraw as counsel, asserting that there is no issue of arguable merit for an appeal. Hernandez was notified, via certified mail, of his right to file pro se points for reversal, but he has not filed any points. We find that defense counsel has complied with *Anders* and Rule 4-3(b); accordingly, we affirm the trial court’s revocation decision and grant defense counsel’s motion to withdraw.

I. *Background*

On October 5, 2020, Hernandez pleaded guilty in case No. 66FCR-19-577 to possession of methamphetamine, a Class D felony; two counts of possession of drug paraphernalia, Class D felonies; and manufacture of marijuana, a Class A misdemeanor. Hernandez also pleaded nolo contendere in case No. 66FCR-19-600 to manslaughter, a Class C felony. On the Class D felonies, Hernandez was sentenced to fourteen months (plus thirteen days) in the Arkansas Department of Correction (ADC) and received a suspended imposition of sentence (SIS) for a period of fifty-eight months; he was sentenced to twelve months in the county jail for manufacturing marijuana; and he was sentenced to fourteen months in the ADC followed by an SIS for a period of 106 months for manslaughter. Hernandez's suspended sentences were subject to several standard terms and conditions.

On January 19, 2023, the State filed a petition to revoke Hernandez's suspended sentences, alleging that he had violated the terms and conditions of those suspended sentences by committing first-degree terroristic threatening and third-degree domestic battering against his former fiancée, Dawn Edwards. A hearing was held in May, and the State presented the testimony of Edwards and Elijah Crist, the police officer who responded to a 911 call on January 13, 2023. Photographs of Edwards's injuries were also introduced into evidence. At the conclusion of the hearing, the trial court found that Hernandez had violated the terms and conditions of his suspended sentences and sentenced him to an aggregate term of 164 months' imprisonment for the underlying felony drug offenses and for manslaughter.

## II. *No-Merit Appeals*

An attorney's request to withdraw from appellate representation based on a meritless appeal must be accompanied by a brief that contains a list of all rulings adverse to his client that were made on any objection, motion, or request made by either party. *Jones v. State*, 2012 Ark. App. 69, 388 S.W.3d 503. The argument section of the brief must contain an explanation of why each adverse ruling is not a meritorious ground for reversal. *Id.* We are bound to perform a full examination of the proceedings as a whole to decide if an appeal would be wholly frivolous. *Id.* The test is not whether counsel thinks that the trial court committed no reversible error but whether the points to be raised on appeal would be wholly frivolous. *Oliver v. State*, 2017 Ark. App. 16.

### III. *Adverse Rulings*

In revocation proceedings, the State has the burden of proving that an appellant violated the terms of his suspended sentence, as alleged in the revocation petition, by a preponderance of the evidence, and we will not reverse the trial court's decision to revoke unless it is clearly against the preponderance of the evidence. *Miller v. State*, 2022 Ark. App. 8. The State need only show that the appellant committed one violation in order to sustain a revocation. *Id.* We defer to the trial court on matters of credibility and the weight of the evidence. *Id.*

Edwards testified that on January 13, Hernandez, who was intoxicated, accused her of cheating on him when she was actually trying to surprise him for his birthday. She stated that Hernandez punched her in the face, cutting her lip; kicked her with steel-toed boots;

and dragged her by her hair. Her injuries resulted in bleeding, swelling, and bruising. Edwards also testified that Hernandez told her that she would die that night.

Given Edwards's apparently credible testimony that Hernandez beat her and threatened to kill her, along with the photographs of injuries that Edwards sustained, we agree with defense counsel's conclusion that there is no merit to an appeal with respect to the sufficiency of the evidence supporting revocation of Hernandez's suspended sentences.

Further, defense counsel asserts that there were two potentially adverse evidentiary rulings during the hearing. On cross-examination, defense counsel asked Edwards whether she had had any prior similar incidents involving Hernandez, to which she said that she had, so defense counsel asked whether she had told the responding officers otherwise. Edwards denied telling an officer that the couple had *not* had any prior incidents. On redirect examination, the following exchange occurred:

[PROSECUTOR]:                    You said this had happened before—or [Hernandez] had gotten physical with you previously in October of 2022?

[EDWARDS]:                        Yes, ma'am—yes, sir. I'm sorry.

[PROSECUTOR]:                    What happened on that day?

[EDWARDS]:                        He—I had to leave work. He was drunk. I had to leave work. He was on the property and I was done with him always fighting with me.

[PROSECUTOR]:                    He was on the property of what?

[EDWARDS]:                        He was on my property. At that point, I was completely done with him. And he—when I arrived home from work, he was—he had busted out the rear window of his

Mazda RX-8, busted out the window and he was laying up on top of the back seat.

[DEFENSE COUNSEL]: Judge, I'm going to—it seems like it's getting off on some other incident. It sounds like it occurred—

THE COURT: Well, I think you brought it up, but I think we have gone as far as we need to go.

[PROSECUTOR]: [Defense Counsel] had asked you about the officers asking you if this had ever happened before, if he had ever been physical before and you said no. Do you remember that question?

[EDWARDS]: I remember her asking.

[PROSECUTOR]: And you said that—your testimony was that he didn't ask you if he had ever gotten physical with you, correct?

[EDWARDS]: I told them there was an incident before.

[PROSECUTOR]: Did they actually ask you or did you tell the police that you were scared that he was going to kill you and that was the first time you felt like that?

[EDWARDS]: Yes.

[DEFENSE COUNSEL]: Judge, [the prosecutor] seems to be kind of leading [Edwards].

THE COURT: What now?

[DEFENSE COUNSEL]: He seems to be kind of leading her down a path on that and he wants to talk about what the officer had said.

[PROSECUTOR]: I'm just asking her what she told the officer just to clarify what [defense counsel] has asked her.

THE COURT: I'm going to allow it.

[PROSECUTOR]: Just to—after the officers had asked you some questions, did you tell the officers that you were scared [Hernandez] was going to kill you and that that was the first time you had felt like that?

[EDWARDS]: Yes, sir.

The rules of evidence do not strictly apply in revocation proceedings. *McKinney v. State*, 2020 Ark. App. 473, 612 S.W.3d 172. Regardless, any alleged evidentiary error would be harmless in light of the overwhelming evidence that Hernandez violated the terms and conditions of his suspended sentences by either beating Edwards or threatening to kill her on January 13, 2023, which had little to do with what Edwards may have told the police officers about any prior incidents. *Walker v. State*, 2020 Ark. App. 559. We agree with defense counsel that there could be no issue of arguable merit to raise on appeal regarding these evidentiary rulings.

From our review of the record and the brief presented to us, we conclude that defense counsel has complied 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 the trial court's revocation of Hernandez's suspended sentences and grant defense counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

KLAPPENBACH and WOOD, JJ., agree.

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One brief only.