

Cite as 2024 Ark. App. 21
ARKANSAS COURT OF APPEALS
DIVISION II
No. CR-23-287

CHRISTON JACE HOUSTON		Opinion Delivered January 17, 2024
	APPELLANT	APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. 63CR-21-453]
V.		HONORABLE KEN CASADY, JUDGE
STATE OF ARKANSAS		REMANDED TO SETTLE AND SUPPLEMENT THE RECORD; REBRIEFING ORDERED; MOTION TO WITHDRAW DENIED WITHOUT PREJUDICE
	APPELLEE	

RITA W. GRUBER, Judge

Christon Jace Houston appeals an order of the Saline County Circuit Court revoking his probation and sentencing him to sixty months in the Arkansas Department of Corrections, twelve months in the Saline County Detention Center, and sixty months' probation.¹ Pursuant to Rule 4-3(b)(1) (2023) of the Rules of the Arkansas Supreme Court and Court of Appeals and *Anders v. California*, 386 U.S. 738 (1967), Houston's counsel has filed a no-merit brief and a motion to withdraw asserting that there is no issue of arguable merit to raise on appeal. Houston was provided with a copy of his counsel's brief and notified

¹This is a companion case to another criminal-revocation case, No. 63CR-21-802, in which Houston had also been placed on probation. The circuit court held a combined revocation hearing in both cases but issued separate sentencing orders in each case revoking Houston's probation. Houston has filed separate appeals, and today we hand down opinions in both. See *Houston v. State*, 2024 Ark. App. 22.

that he had thirty days to raise any points of appeal, which he did not do. Thus, the State filed no reply brief. We remand the case to the circuit court to settle and supplement the record because we have not been provided with a complete record.

This court must have the entire record of proceedings to properly review a criminal case presented in an *Anders* no-merit format. *Stansell v. State*, 2011 Ark. App. 462, at 3. If anything material to either party is omitted from the record by error or accident, the court may direct that the omission be corrected and, if necessary, a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)).

Here, the record does not contain a copy of the conditions of Houston’s probation. Its absence precludes our review for two reasons. First, we must know that Houston was apprised of the conditions of his probation. *See* Ark. Code Ann. § 5-4-303(e)(2) (Supp. 2023); *Wade v. State*, 64 Ark. App. 108, 983 S.W.2d 147 (1998) (reversing probation revocation where appellant was not apprised in writing of the probation condition that resulted in the revocation). Second, we must also know what the conditions were to determine that the circuit court’s decision to revoke was not clearly against the preponderance of the evidence. *See Riley v. State*, 2018 Ark. App. 27, at 2 (holding that the conditions of probation are essential to a review of whether those conditions have been violated); *see also Gonzales v. State*, 2020 Ark. App. 219, at 3, 599 S.W.3d 341, 343 (stating standard of review). Without the conditions of probation, we cannot decide whether there was sufficient evidence to support the finding that Houston violated a condition.

We will not address this appeal until the record is settled and supplemented and the case is rebriefed. Accordingly, we remand this case for the record to be settled and supplemented within thirty days. After counsel has filed a substituted brief, which must take place within thirty days after supplementation of the record, our clerk will forward counsel's motion and substituted brief to Houston, and he will have thirty days to raise any pro se points, should he choose to do so. The State will likewise be given an opportunity to file a reply brief in light of the supplemental record and in the event Houston chooses to raise pro se points.

Remanded to settle and supplement the record; rebriefing ordered; motion to withdraw denied without prejudice.

ABRAMSON and THYER, JJ., agree.

Jones Law Firm, by: *F. Parker Jones III*, for appellant.

One brief only.