

Cite as 2024 Ark. App. 25
ARKANSAS COURT OF APPEALS
DIVISION II
No. CR-23-262

SAMUAL MCLEOD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 17, 2024

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. 14CR-21-154]

HONORABLE DAVID W. TALLEY, JR.,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

CINDY GRACE THYER, Judge

Samual McLeod appeals a Columbia County Circuit Court order revoking his probation and sentencing him to six years in the Arkansas Department of Correction. McLeod’s counsel has filed a no-merit brief and motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(b), contending that there are no issues of arguable merit to raise on appeal. In addition, the clerk of our court notified McLeod of counsel’s motion and brief and advised him of his right to file pro se points; he availed himself of the opportunity, and the State has filed a reply brief. We affirm and grant counsel’s motion to withdraw.

I. *Background*

McLeod was placed on five years' probation on April 7, 2022, following his guilty plea to the offense of possession of drug paraphernalia, a Class D felony. The terms and conditions of his probation required him, among other things, to report to his probation officer, obey all federal and state laws, refrain from using controlled substances and alcohol, and pay all court-ordered fines and fees in monthly installments of \$50.

The State filed a petition to revoke McLeod's probation on September 26, 2022, and amended revocation petitions on November 10 and November 30. The petitions alleged that McLeod had violated the conditions of his probation by (1) failing to report to his supervising officer; (2) committing new criminal offenses; (3) testing positive for controlled substances on multiple occasions; and (4) failing to pay his fees, costs, and fines.

The circuit court held a hearing on the State's revocation petition on January 19, 2023. The court, without objection, took judicial notice of the terms and conditions of McLeod's probation. In addition, the court heard testimony from McLeod's probation supervisor; an officer with the Magnolia Police Department who arrested McLeod on a probation-violation warrant; McLeod's sister; and an employee of the Columbia County Sheriff's Department whose duties involved managing the fines and fees collected by the sheriff's office. At the conclusion of the hearing, the court found that the State had met its burden of proving that McLeod had violated numerous terms and conditions of his probation. The court revoked McLeod's probation and sentenced him to six years in the Arkansas Department of Correction. McLeod timely appealed.

II. *No-Merit Framework*

Because this is a no-merit appeal, counsel is required to list each ruling adverse to the defendant and explain why each ruling is not a meritorious ground for reversal. *Anders*, 386 U.S. at 744; Ark. Sup. Ct. Rule 4-3(b)(1). The test in a no-merit appeal 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. *Livsey v. State*, 2020 Ark. App. 332, 602 S.W.3d 770. Pursuant to *Anders*, we are required to fully examine all the proceedings to determine whether the case is wholly frivolous. *Williams v. State*, 2021 Ark. App. 164.

III. *Standard of Review*

In probation-revocation proceedings, the State has the burden of proving by a preponderance of the evidence that a probationer violated the terms of his or her probation as alleged in the revocation petition, and we will not reverse the circuit court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Skaggs v. State*, 2023 Ark. App. 325, 670 S.W.3d 811. When multiple violations are alleged, a circuit court's revocation will be affirmed if the evidence is sufficient to establish that the appellant violated any one condition of the probation. *Id.* This court defers to the circuit court's determinations regarding witness credibility and the weight to be accorded testimony. *Hill v. State*, 2023 Ark. App. 381.

IV. *Discussion*

In his brief, counsel adequately addresses the sole adverse ruling against McLeod: the revocation of his probation. As noted above, the conditions of McLeod's probation required him to report to his supervising officer as directed, to obey all federal and state laws, to refrain

from using or possessing any controlled substance, and to pay all court-ordered fines, fees, and costs. The testimony at the revocation hearing touched on McLeod's violations of each of these conditions.

Tori Moore, McLeod's probation supervisor, testified that McLeod failed to report to her on three separate dates and tested positive for multiple drugs on multiple occasions. Officer Jordan Hansen from the Magnolia Police Department testified that he arrested McLeod on a probation-violation warrant on October 23, 2022; during the search incident to that arrest, Hansen found a glass smoking pipe in McLeod's backpack as well as a clear plastic baggie containing a crystal-like substance consistent with methamphetamine. Hansen then arrested McLeod for possession of methamphetamine and possession of drug paraphernalia. Rebecca Gannaway of the Columbia County Sheriff's Department testified that her duties involved keeping up with the fines and fees that are collected by the sheriff's office. As of November 30, the date on which the revocation petition was filed, McLeod was delinquent on his fines and fees in the amount of \$880. On cross-examination, she added that no payments had ever been made. The evidence presented at the revocation hearing thus clearly supported the circuit court's decision to revoke McLeod's probation.

Counsel also correctly notes that McLeod's six-year sentence is within the statutory sentencing range for a Class D felony, *see* Ark. Code Ann. § 5-4-401(a)(6) (Repl. 2013), so there would be no merit to any argument regarding the court's sentencing decision. *See Skaggs*, 2023 Ark. App. 325, 670 S.W.3d 811 (sentence within the range of available punishment provides no meritorious ground for reversal).

In addition to the points raised by counsel, McLeod has also submitted pro se points. He first addresses the circuit court's findings regarding his failure to report. He claims that on May 27, 2022, he did not have a means of transportation to get to the parole office; on the remaining visits, he asserts, "[I] didn't even [know] I had them so I can't be somewhere I don't know I'm supposed to be." McLeod failed to raise his lack-of-transportation or lack-of-notice arguments before the circuit court, however, and they are therefore not preserved for appeal. See *Bluebird v. State*, 2011 Ark. App. 474 (holding that arguments raised in pro se points in an *Anders* brief were not preserved because they were not presented below).

Likewise, although McLeod challenges Officer Hansen's testimony about finding a meth pipe in his backpack (he suggests it was "an oil burner"), he failed to raise the argument below; it is therefore not preserved for appellate review. See *id.* Moreover, this presents a question regarding the credibility of the officer's testimony, which we defer to the circuit court. See *Goldsmith v. State*, 2023 Ark. App. 77, 660 S.W.3d 858.

McLeod also argues that he was behind on paying his fines and fees because he did not get his SSI check and thus lacked the means to pay. Once again, he failed to raise this argument below. See *Lenderman v. State*, 2017 Ark. App. 346 (refusing to address pro se point when it was raised for the first time on appeal).

McLeod's remaining arguments amount to complaints that he failed to understand the terms and conditions of his probation due to his disability¹ and his pleas for assistance

¹McLeod is hearing impaired.

in getting into rehab. Again, these arguments were not raised before the circuit court, are not preserved, and thus cannot form the basis for a meritorious argument on appeal.

From our review of the entire record, the brief presented by McLeod's counsel, and McLeod's pro se points, we conclude an appeal would be wholly frivolous in this case. Therefore, we affirm the order of revocation and grant McLeod's counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

ABRAMSON and GRUBER, JJ., agree.

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

Tim Griffin, Att'y Gen., by: Michael Zangari, Ass't Att'y Gen., for appellee.