

Cite as 2024 Ark. App. 251
ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-23-446

LACEY HOGUE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 17, 2024

APPEAL FROM THE SALINE COUNTY
CIRCUIT COURT
[NO. 63CR-20-886]

HONORABLE JOSH FARMER, JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

N. MARK KLAPPENBACH, Judge

This is a no-merit appeal filed on behalf of Lacey Hogue following the Saline County Circuit Court’s revocation of her probation. Hogue’s counsel filed a timely notice of appeal followed by a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(b) (2023), along with a motion to be relieved as counsel asserting that there is no issue of arguable merit on appeal. Appellant provided no pro se points for reversal, so the State filed no response. When counsel first presented this no-merit appeal, we ordered counsel to rebrief the case because counsel did not address all the adverse rulings. Counsel has submitted a new brief for our review, Hogue did not file any pro se points, and the State did not file a brief. Counsel has now complied with the requirements of no-merit appeals. We affirm the appeal and grant counsel’s motion to be relieved.

In September 2021, Hogue entered a negotiated guilty plea on two criminal counts, failure to appear (a Class C felony) and breaking or entering (a Class D felony), in exchange for a three-year probationary term. In October and November 2021, the State filed petitions to revoke Hogue's probation, alleging failure to report on several dates, improperly removing her GPS ankle device, failure to make payments toward fines and costs, and committing a new crime (theft by receiving).

At the revocation hearing, a sheriff's-office employee testified that Hogue had made no payments since September 2021 and that her fines and fees were currently \$900. A community-corrections officer testified that Hogue failed to report several times, she admitted using illegal drugs, and she removed ankle-monitoring devices three times. Hogue admitted her drug use, her long-term difficulty with addiction, her failures to report, having taken off the ankle monitor three times, and that she had three pending criminal cases in Pulaski County. Hogue essentially asked for mercy from the court, as did her mother. The circuit court found Hogue in violation of the conditions of her probation and sentenced her to sixteen years in prison. This appeal followed.

This is a no-merit appeal, which requires that the argument section of counsel's brief contain a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests together with an explanation as to why each is not a meritorious ground for reversal. *Skaggs v. State*, 2023 Ark. App. 325, 670 S.W.3d 811. 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. *Id.* Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *Id.*

In revocation proceedings, the State has the burden of proving by a preponderance of the evidence that a defendant violated the terms of his or her probation terms 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. *Stanley v. State*, 2023 Ark. App. 89, 661 S.W.3d 218. The State need only show that the appellant committed one violation to sustain a revocation. *Id.*

In this no-merit brief, counsel has addressed the sufficiency of the evidence presented in support of the revocation. Given the multiple violations found by the circuit court and Hogue's admission that she had not been compliant with the terms of her probation, there could be no issue of arguable merit to raise on appeal concerning the sufficiency of the evidence to revoke.

The only other adverse ruling was the circuit court's rejection of Hogue's request for a lesser sentence (three years in prison, or four years at a regional corrections facility, and drug rehabilitation). The circuit court sentenced her to ten- and six-year terms in prison, respectively, for the Class C and D felonies and ordered that the sentences run consecutively.

As explained by counsel, there could be no meritorious argument raised on appeal of this adverse ruling. Sentencing is entirely a matter of statute, and the circuit court has the authority to impose a particular sentence when it complies with the applicable statute. *Fulks*

v. State, 2023 Ark. App. 566, 680 S.W.3d 743. Here, upon revocation, Hogue was subject to being sentenced for the underlying crimes in compliance with the statutory maximums and minimums, and the circuit court sentenced her accordingly. See Ark. Code Ann. § 5-4-401(a)(4)–(5) (Repl. 2013) (applicable sentencing ranges); *Skaggs v. State*, 2023 Ark. App. 325, 670 S.W.3d 811 (authority to impose consecutive sentences). Thus, no meritorious argument could be made on appeal that the circuit court erred in rejecting her plea for a lesser punishment. See *Pettigrew v. State*, 2019 Ark. App. 420.

Having reviewed this appeal under the proper standards, we hold that counsel has complied with the mandates of no-merit appeals and that the appeal has no merit. Accordingly, we affirm the revocation of Hogue’s probation and the sentencing order that followed, and we grant counsel’s motion to be relieved.

Affirmed; motion to be relieved granted.

GLADWIN and GRUBER, JJ., agree.

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

One brief only.