

Cite as 2024 Ark. App. 259
ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-23-492

RAYMOND PAGE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 17, 2024

APPEAL FROM THE SALINE COUNTY
CIRCUIT COURT
[NO. 63CR-20-563]

HONORABLE JOSH FARMER, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

WENDY SCHOLTENS WOOD, Judge

Raymond Page appeals the Saline County Circuit Court’s sentencing order revoking his probation and sentencing him to ten years’ imprisonment. Pursuant to Arkansas Supreme Court Rule 4-3(b) and *Anders v. California*, 386 U.S. 738 (1967), Page’s counsel has filed a motion to withdraw, stating that there is no merit to an appeal.¹ The motion is accompanied by a brief in which counsel explains why there is nothing in the record that would support an appeal. The clerk of this court served Page with a copy of counsel’s brief and notified him of his right to file a pro se statement of points for reversal within thirty days, but he has not done so. We affirm the revocation and grant counsel’s motion to withdraw.

¹This appeal returns to us after we ordered rebriefing in *Page v. State*, 2024 Ark. App. 28.

On November 8, 2021, Page pled guilty to possession of a controlled substance, a Class D felony, and failure to appear, a Class C felony. In an order entered on November 15, the circuit court sentenced him to concurrent terms of five years' probation. The State filed a petition to revoke his probation on May 3, 2022, and an amended petition to revoke his probation on March 14, 2023. In its amended petition, the State alleged that Page had failed to report as directed; tested positive for methamphetamine, amphetamine, and THC; and committed the new offenses of possession of controlled substances and possession of drug paraphernalia.

On March 30, the circuit court held a revocation hearing. The only witness was Page's probation officer, Richard Perry. At the conclusion of the hearing, the circuit court found that Page had violated the terms and conditions of his probation and, in an order entered on April 20, sentenced him to six years' imprisonment for possession of a controlled substance and ten years' imprisonment for failure to appear, to run concurrently.

Rule 4-3(b)(1) provides that a no-merit brief shall contain an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The brief's statement of the case and the facts shall contain, in addition to the other material parts of the record, all rulings adverse to the defendant made by the circuit court and the page number where each adverse ruling is located in the appellate record. Ark. Sup. Ct. R. 4-3(b)(1) (2023).

Page's counsel has briefed the court on all three adverse rulings in the case. The first is the circuit court's revocation of Page's probation. To revoke a defendant's probation, the circuit court must find by a preponderance of the evidence that the defendant has inexcusably violated a condition of his or her probation. *McDougal v. State*, 2015 Ark. App. 212, at 4, 465 S.W.3d 863, 865. The State bears the burden of proof but need only prove one violation. *Peals v. State*, 2015 Ark. App. 1, at 4, 453 S.W.3d 151, 154. Officer Perry's undisputed testimony was that Page twice absconded from supervision and failed to report—once for four months—in violation of the condition requiring him to report as directed to his supervising officer. Officer Perry also testified that Page tested positive for methamphetamine and amphetamine on April 25, May 2, May 27, and June 6, 2022, in violation of the condition forbidding him from using, selling, distributing, or possessing any controlled substance. We hold there would be no merit to an appeal of the sufficiency of the evidence supporting the revocation.

Counsel also addresses the circuit court's denial of Page's request for a continuance to allow him to obtain a private attorney and explains why it would not be a meritorious ground for reversal on appeal. We review the denial of a motion for a continuance for an abuse of discretion. *Harvey v. State*, 2022 Ark. App. 283, at 5, 646 S.W.3d 292, 296. In order to warrant reversal, an appellant must demonstrate both that the circuit court abused its discretion in denying the continuance and prejudice from the denial of the continuance that amounts to a denial of justice. *Id.*, 646 S.W.3d at 296. Here, immediately before the revocation hearing, Page's counsel asked the court for a continuance to allow Page to obtain

a “paid attorney” that Page was anticipating would “accept representation” of him “next week.” The circuit court denied the request because the case had been pending for a year, no private attorney had “accepted representation” of Page, and there was no indication in the record that Page was not being represented by able counsel. We agree that the denial of Page’s motion for a continuance would not be a meritorious ground for reversal under an abuse-of-discretion review.

Finally, counsel addresses a request by Page during the sentencing portion of the revocation hearing for the court to consider placing him in a regional correction facility to get drug treatment rather than sentencing him to imprisonment. The court denied the request and sentenced Page to ten years’ imprisonment. In a revocation proceeding, the circuit court has discretion in the sentence imposed and is authorized to impose any sentence that it could have imposed originally. Ark. Code Ann. § 16-93-308(g)(1)(A) (Supp. 2023). Here, Page was sentenced within the statutory guidelines. *See* Ark. Code Ann. § 5-4-401(a)(4)–(5) (Repl. 2013) (the sentence for a Class C felony shall be not less than three years nor more than ten years, and the sentence for a Class D felony shall not exceed six years). No meritorious argument could be made that the circuit court abused its discretion by not placing him in a regional correction facility.

From our review of the record and the brief presented to us, we find counsel has complied with Rule 4-3(b) and hold that the appeal is without merit. Accordingly, we grant counsel’s motion to withdraw and affirm the revocation.

Affirmed.

HIXSON and BROWN, JJ., agree.

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

One brief only.