

Cite as 2024 Ark. App. 344

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-22-545

LEONARD C. STEPHENSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 29, 2024

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. 26CR-21-316]

HONORABLE RALPH C. OHM,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**ROBERT J. GLADWIN, Judge**

Leonard Stephenson (Stephenson) appeals the revocation of his probation in the Garland County Circuit Court. Stephenson's attorney previously filed a no-merit brief in this matter that failed to address all the adverse rulings. We ordered rebriefing in *Stephenson v. State*, 2023 Ark. App. 453, and now counsel has filed a no-merit brief that complies with *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(b) (2023) of the Arkansas Rules of the Supreme Court and Court of Appeals, along with a motion to be relieved as counsel asserting that there is no issue of arguable merit on appeal. Stephenson was sent a copy of his counsel's brief and motion, but no pro se points for reversal have been filed; thus, the State did not file a reply brief. We affirm the revocation of Stephenson's probation and grant counsel's motion to be relieved.

## I. *Background Facts*

On August 4, 2021, Stephenson entered into a negotiated guilty plea to delivery of methamphetamine or cocaine and was sentenced to 120 months' probation. Stephenson signed the plea agreement and conditions of probation, which were filed on August 4. Additionally, Stephenson agreed to pay supervision fees of \$35 a month and \$2,065 in fines, fees, and costs. The circuit court entered the sentencing order on August 30.

On February 8, 2022, the State filed a petition requesting that Stephenson be ordered to show cause as to why his probation should not be revoked. In the attached violation report, the State alleged that Stephenson had committed the Class C felony offense of forgery and the Class A misdemeanor offense of possession of a controlled substance and that he failed to pay court costs and fines.

On May 4, a revocation hearing was held. Justin Stewart, a probation and parole officer with Arkansas Community Correction, testified that on or about January 24, 2022, Stephenson committed the Class C felony offense of forgery and the Class A misdemeanor offense of possession of a controlled substance and, as of February 1, was in arrears \$2,100 in court costs and fines. The State also called Sherwood Police Officer Ronnie Loftis, who testified regarding his arrest of Stephenson for the felony and misdemeanor charges. Officer Loftis testified that when he arrived at the scene, he saw Stephenson sitting in the drive through of the bank with a check Stephenson alleged Caleb Dawson had given him in the amount of \$650. He also testified that during his interview with the bank teller, Hannah Smith, she told him that the account Stephenson was attempting to withdraw money from

had been closed due to checks being stolen. Officer Loftis testified that, after conducting a search of Stephenson, he found an unmarked pill bottle with several pills inside. One of the pills was identified as a Xanax bar.

Stephenson took the stand in his defense and denied the allegations. On direct examination, his counsel asked if a fine or extended probation would be an acceptable punishment for the alleged violations, Stephenson stated that it would, and he further proposed house arrest as an alternative. Stephenson testified that the alleged victim, Mr. Dawson, would be willing to testify on his behalf that he did not forge the check; however, Stephenson acknowledged on cross-examination that Mr. Dawson was not at the revocation hearing. He also admitted he did not have a current prescription for the pills in his possession when he was arrested. Finally, Stephenson testified that he had not paid his court cost and fines because he did not have a car and did not know where to make the payments. He acknowledged signing the sentencing order, which included instructions about where to pay his fines and court costs.

At the conclusion of the hearing, the circuit court held that Stephenson had failed to comply with the terms and conditions of his probation; found that Officer Loftis was a credible witness regarding the forgery; and found that Stephenson had willfully failed to pay fines and costs associated with his guilty plea. Accordingly, the court entered an order revoking Stephenson's probation on May 6, 2022, and sentenced him to ten years in the Arkansas Division of Correction (ADC). On June 3, Stephenson filed a timely notice of appeal.

## II. Discussion

Stephenson's attorney has filed a no-merit brief and a motion to be relieved as counsel. A request to withdraw on the ground that the appeal is wholly without merit must be accompanied by a brief containing an argument section that lists 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. Ark. Sup. Ct. R. 4-3(b)(1). The test 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. *Compton v. State*, 2024 Ark. App. 17 (citing *Anders, supra*). Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *Id.*

Stephenson's attorney contends that there is no nonfrivolous argument that could serve as the basis for an appeal regarding the sufficiency of the State's evidence to support revocation. To revoke probation, the State must prove by a preponderance of the evidence that the defendant violated a condition of his or her probation. *Stewart v. State*, 2021 Ark. App. 289, 624 S.W.3d 357. We will not reverse the circuit court's findings unless they are clearly against the preponderance of the evidence. *Id.* Determining whether a preponderance of the evidence exists turns on questions of credibility and weight to be given to the testimony. *Id.* There were multiple violations found to be true by the circuit court, and any one of those violations would support revocation. The testimony adduced at the hearing supports the circuit court's revocation. There was evidence presented that Stephenson

possessed controlled substances without a valid prescription, committed a new felony offense, and willfully failed to pay fines and court costs. Stephenson testified and admitted his failure to pay fines and court costs and to possession of a controlled substance with no current prescription. Because the State need only show that the appellant committed one violation in order to sustain a revocation, we affirm as to the sufficiency of the evidence supporting the revocation of Stephenson's probation.

Counsel also addressed three other adverse rulings in the no-merit brief: (1) the circuit court's denial of Stephenson's motion to continue the revocation hearing; (2) the circuit court's overruling Stephenson's objection to a question that he claimed was beyond the scope of examination; and (3) the circuit court's refusal to grant Stephenson's request for extended probation as a possible sanction for violating the conditions of his probation.

At the hearing, Stephenson's counsel orally moved for a continuance, stating that he had just been retained the night before, and he believed that exculpatory evidence would be uncovered during discovery on the pending criminal charges in Sherwood. The State objected, stating it had probation and parole officers in attendance, and two officers had come from outside the jurisdiction to attend the revocation hearing. In denying Stephenson's request, the circuit court noted that Stephenson had refused to waive the sixty-day statutory requirement for the hearing; therefore, the court arranged for the hearing to occur within sixty days. The court further explained that the State had its witnesses ready—present in court—and they had come from out of town. It is well settled that the denial of a motion for continuance is within the sound discretion of the circuit court and will not be

disturbed absent a clear abuse of that discretion. *Hendrix v. State*, 2019 Ark. 351, 588 S.W.3d 17. An appellant must not only demonstrate that the circuit court abused its discretion by denying the motion or a continuance but also show prejudice that amounts to a denial of justice. *Ware v. State*, 348 Ark. 181, 75 S.W.3d 165 (2002). Here, Stephenson refused to waive the requirement that his revocation hearing be held within sixty days, and he waited until the night before the hearing to retain new counsel. Stephenson provided no notice to the court or the State before the hearing of his intent to request a continuance; thus, the State came ready and prepared with witnesses—two from out of town—to present evidence in support of the revocation. Accordingly, we agree that the denial of appellant’s motion for continuance was not an abuse of discretion.

Next, Stephenson objected that the State went outside his direct examination during its cross-examination; the circuit court overruled the objection. The court explained that it has liberal discretion when it comes to cross-examination and was going to allow the State to ask Stephenson why Mr. Dawson would give him \$650. The circuit court has considerable discretion in determining the scope of cross-examination, and we do not reverse absent an abuse of that discretion. *See Warren v. State*, 314 Ark. 192, 862 S.W.2d 222 (1993); *see also* Ark. R. Evid. 611(b) (2023). We cannot say that the circuit court abused its discretion in overruling Stephenson’s objection.

Finally, Stephenson requested that the court either extend his probation or sentence him to house arrest as punishment for his probation violation. The circuit court denied his request and sentenced Stephenson to 120 months in the ADC. When a circuit court revokes

a suspended sentence or probation, it may enter a judgment of conviction and impose any sentence that might have been imposed originally for the offense of which he or she was found guilty. Ark. Code Ann. § 16-93-308(g)(1)(A) (Repl. 2016); *see also Leal v. State*, 2014 Ark. App. 673. Delivery of methamphetamine—the offense Stephenson pleaded guilty to and for which he received supervised probation—is a Class B felony. The sentence for a Class B felony shall be not less than five years nor more than twenty years. Ark. Code Ann. § 5-4-401(a)(3) (Repl. 2013). The conditions of probation that Stephenson signed warned him that any violation could result in a sentence of up to twenty years’ imprisonment in the ADC and/or a fine of up to \$15,000. Thus, because Stephenson was sentenced within the permissible statutory range of punishment, the revocation and sentences are affirmed.

### III. Conclusion

From our review of the record and the brief presented to us, we find that counsel has complied with *Anders* and Rule 4-3 of the Arkansas Rules of the Supreme Court and Court of Appeals, and we hold that the appeal is without merit. Accordingly, we affirm the revocation and grant counsel’s motion to withdraw.

Affirmed; motion to withdraw granted.

VIRDEN and HIXSON, JJ., agree.

*Justin B. Hurst*, for appellant.

One brief only.