

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-23-605

COLTON PATRICK

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. 24OCR-20-140]

HONORABLE JAMES DUNHAM,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

BRANDON J. HARRISON, Chief Judge

A jury found Colton Patrick guilty of delivery of methamphetamine or cocaine, and he was sentenced to twenty-five years' imprisonment. Patrick's attorney has filed a no-merit brief and a motion to withdraw as counsel pursuant to Ark. Sup. Ct. R. 4-3(b)(1) (2023) and *Anders v. California*, 386 U.S. 738 (1967), asserting that this appeal is wholly without merit. The clerk of this court mailed a copy of counsel's motion and brief to Patrick's last-known address informing him of his right to file pro se points for reversal, but he has not done so. We grant counsel's motion to withdraw and affirm the conviction.

On 31 July 2020, the State charged Patrick with delivery of methamphetamine or cocaine (more than two grams but less than ten grams). The criminal information also noted Patrick's habitual-offender status. In March 2023, the circuit court convened a jury trial, and the State's evidence showed that law enforcement had arranged a controlled buy of

methamphetamine from Patrick using a confidential informant. The officers observed the buy and also captured audio and video of the buy on a transmitting device worn by the informant. Afterward, the informant provided law enforcement with a package containing approximately 3.1 grams of methamphetamine.

The State rested, and the defense also rested without moving for a directed verdict or offering any evidence. The jury found Patrick guilty as charged and recommended a sentence of twenty-five years' imprisonment. The court accepted the recommendation and sentenced Patrick accordingly. Patrick timely appealed the circuit court's order.

Rule 4-3(b)(1) requires the argument section of a no-merit brief to contain "a list of all rulings adverse to the defendant made by the circuit court on all objections, motions and requests . . . with an explanation as to why each . . . is not a meritorious ground for reversal." 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. *T.S. v. State*, 2017 Ark. App. 578, 534 S.W.3d 160. Pursuant to *Anders*, we are required to determine whether the case is wholly frivolous after a full examination of all the proceedings. *Id.* A no-merit brief in a criminal case that fails to address an adverse ruling does not satisfy the requirements of Rule 4-3(b)(1), and rebriefing will be required. *Vail v. State*, 2019 Ark. App. 8.

Counsel explains that challenging the sufficiency of the evidence supporting Patrick's conviction is not a meritorious ground for reversal because defense counsel did not make a directed-verdict motion below. Arkansas Rule of Criminal Procedure 33.1(a) (2023) requires that directed-verdict motions in a jury trial be made at the close of the State's evidence and at the close of all the evidence, and such motions shall state the specific grounds

therefor. The failure to challenge the sufficiency of the evidence in this manner and at the prescribed times waives any question pertaining to the sufficiency of the evidence to support the verdict. Ark. R. Crim. P. 33.1(c). Counsel also explains that the twenty-five-year sentence Patrick received for his conviction is within the sentencing range of five to forty years for a habitual offender on a Class B felony, so his sentencing does not provide a meritorious ground for reversal.

Counsel also describes two adverse evidentiary rulings. Matters pertaining to the admissibility of evidence are left to the sound discretion of the circuit court. *McEwing v. State*, 366 Ark. 456, 237 S.W.3d 43 (2006). We will not reverse such a ruling absent an abuse of that discretion, nor will we reverse absent a showing of prejudice because prejudice is not presumed. *Hoyle v. State*, 2018 Ark. App. 498, 562 S.W.3d 253.

First, the defense objected on relevancy grounds when the State asked a police officer how many interviews he had done “of folks that you’ve investigated that have sold drugs.” The court overruled the objection, and the officer responded, “[P]robably in excess of 500.” Counsel explains that the question was relevant to the officer’s level of experience, that there was no abuse of discretion, and that there was no prejudice to Patrick. The number of suspects that the officer had interviewed had no bearing on Patrick’s guilt. Therefore, counsel concludes, this ruling provides no meritorious basis for appeal.

Second, the defense objected on relevancy grounds to the admission of a show-cause order that resulted from Patrick’s failure to attend a jury trial that had been scheduled in June 2022. The court found the exhibit relevant and ordered that it be admitted. The State charged Patrick with failure to appear based on the June 2022 nonappearance, and he was

tried on that charge simultaneously with the possession charge, but the jury found Patrick not guilty of failure to appear. Thus, counsel contends, Patrick can show no prejudice from the admission of the show-cause order, and its admission does not provide a meritorious basis for appeal.

Having reviewed the record and the brief presented by counsel, we conclude that counsel has complied with the requirements of Rule 4-3(b) and that an appeal from Patrick's conviction would be without merit. Accordingly, we grant counsel's motion to withdraw and affirm Patrick's conviction.

Affirmed; motion to withdraw granted.

KLAPPENBACH and MURPHY, JJ., agree.

Debra Reece Johnson, for appellant.

One brief only.