

Cite as 2024 Ark. App. 375  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CR-23-659

CRAIG HENRY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE ARKANSAS  
COUNTY CIRCUIT COURT,  
NORTHERN DISTRICT  
[NO. 01SCR-21-93]

HONORABLE DONNA GALLOWAY,  
JUDGE

REBRIEFING ORDERED; MOTION  
TO WITHDRAW DENIED

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**ROBERT J. GLADWIN, Judge**

Craig Henry was convicted by the Arkansas County Circuit Court of felony fleeing, for which he was sentenced to sixty months' probation. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(b) (2023) of the Rules of the Arkansas Supreme Court and Court of Appeals, Henry's counsel has filed a no-merit brief and a motion to withdraw asserting that there is no issue of arguable merit to raise on appeal.<sup>1</sup>

A no-merit appeal 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,

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<sup>1</sup>The clerk of this court mailed a copy of counsel's motion and no-merit brief to Henry's last-known address informing him of his right to file pro se points for reversal; however, he has not done so. Consequently, the State has not filed a brief.

and requests together with an explanation as to why each is not a meritorious ground for reversal. *Skaggs v. State*, 2023 Ark. App. 325, at 6, 670 S.W.3d 811, 816. 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 of the proceedings. *Id.* For these reasons, 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. *Jeffries v. State*, 2022 Ark. App. 274, at 2-3.

Our review of the record reveals that there was an additional adverse ruling that was not discussed by counsel. Specifically, beginning on page 45 of the record, there was a discussion during sentencing related to the expenses that were incurred by the county sheriff's office for lodging, meals, and going to pick up Henry and returning him after his failure to appear. The record of the expenses was admitted without objection, and the State requested that the expenses be included as a matter of restitution in connection with Henry's sentence. Defense counsel argued that Henry should not be required to reimburse the sheriff's office for the two officers' dinners at Texas Roadhouse or the valet-parking charge at the hotel in Houston. The court subtracted the valet-parking charge but found that Henry should be responsible for reimbursing the sheriff's office for the dinners and other expenses. In his no-merit brief, counsel fails to address this adverse ruling. Because of the deficiency, we deny counsel's motion to withdraw and order rebriefing.

The deficiency we have noted may not be the only one, and counsel is encouraged to review *Anders* and Rule 4-3(b) for the requirements of a no-merit brief. Counsel has thirty days from the date of this opinion to file a substituted brief that complies with the rules, after which our clerk will forward counsel's motion and brief to Henry; and Henry will have thirty days within which to raise pro se points in accordance with Rule 4-3(b). The State will likewise be given an opportunity to file a reply brief if pro se points are made. Ark. Sup. Ct. R. 4-3(b)(3).

Rebriefing ordered; motion to withdraw denied.

VIRDEN and HIXSON, JJ., agree.

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

One brief only.