

Cite as 2024 Ark. App. 385

ARKANSAS COURT OF APPEALS
DIVISION II
No. CR-23-700

JENNIFER LEIGH HILL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 5, 2024

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. 02CR-22-80]

HONORABLE ROBERT B. GIBSON III,
JUDGE

REBRIEFING ORDERED; MOTION
TO WITHDRAW AS COUNSEL
DENIED

CINDY GRACE THYER, Judge

An Ashley County jury found Jennifer Leigh Hill guilty of one count of possession of methamphetamine and one count of possession of drug paraphernalia, and she received a fifteen-year sentence on each count to be served consecutively.¹ Thereafter, she filed a timely notice of appeal. Hill’s attorney now seeks to be relieved as appellate counsel and has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(b) (2023).² The motion is accompanied by a brief in which counsel

¹The jury found her not guilty of one count of simultaneous possession of drugs and firearms and one count of possession of a firearm by certain persons.

²Hill was provided a copy of her counsel’s brief and motion, but she did not file any pro se points for reversal; thus, the State did not file a reply brief.

purportedly explains why there is nothing in the record that would support an appeal. However, upon further review, we have determined that counsel's no-merit brief is not in compliance with *Anders* and Rule 4-3(b)(1). Accordingly, we order rebriefing and deny counsel's motion to withdraw.

First, we note that the no-merit brief before us does not provide an adequate discussion of the adverse rulings identified by counsel. 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.*" Ark. Sup. Ct. R. 4-3(b)(1) (emphasis added).

Here, counsel simply identifies the adverse ruling; cites the applicable rule, case law, or standard of review; and provides a conclusory sentence that the ruling was not in error. His brief provides scant substantive reasoning and does little to explain how the facts apply to the law cited. This is not sufficient. See, e.g., *Stephenson v. State*, 2023 Ark. App. 453; *Kelley v. State*, 2018 Ark. 448; *Taylor v. State*, 2016 Ark. App. 347. "We cannot affirm an appellant's conviction and allow an attorney to withdraw without adequate discussion as to why a particular ruling by the circuit court should not be a meritorious ground for reversal." See *Riley v. State*, 2019 Ark. 252, at 2 (citing *Sartin v. State*, 2010 Ark. 16, 362 S.W.3d 877 (per curiam)).

Second, we note that counsel's brief is also deficient in that it fails to address all adverse rulings as required by Rule 4-3(b)(1). In his brief, counsel addresses several of the

rulings decided adversely to Hill: the circuit court's denial of his motion for directed verdict; its refusal to entertain Hill's late acceptance of a plea offer; his objection to the State's leading a witness; and the circuit court's denial of Hill's request for concurrent sentencing. However, our review of the record reveals that counsel has failed to address several other adverse rulings: the court's denial of one of Hill's motions for a continuance as well as three other evidentiary rulings. The first evidentiary ruling related to the court's allowing the State to introduce and display one of the seized firearms to the jury. The second involved the court's allowing Agent James Slaughter to render an opinion over counsel's objection that a pellet gun is a "deadly weapon." The final evidentiary ruling was associated with defense counsel's attempt to question Agent Slaughter about the probation officer's knowledge of the presence of firearms in Hill's living room cabinet. The State objected to his testimony as speculative, and the circuit court seemingly agreed. Counsel has failed to address these rulings and explain why they do not constitute meritorious grounds for reversal on appeal.

As stated above, 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 no-merit brief before us does not do so.³ A no-merit brief in a criminal case that fails to address

³We recognize that these omitted evidentiary rulings relate primarily to the charges for which Hill was acquitted. However, those issues were nevertheless decided adversely to Hill, and consequently, a discussion is required. As our supreme court has noted, the *Anders* requirements pertain to defense counsel's advocacy and assistance to the appellate court in

an adverse ruling does not satisfy the requirements of Rule 4-3(b)(1), and rebriefing is required. *Pettigrew v. State*, 2019 Ark. App. 336; *Liddell v. State*, 2015 Ark. App. 172; *Swarthout v. State*, 2012 Ark. App. 46.

In light of the foregoing, we direct counsel to cure these deficiencies⁴ by filing a substituted brief that complies with the rules within thirty days from the date of this opinion. In doing so, we express no opinion as to whether the new brief should be made pursuant to Rule 4-3(b) or should be on meritorious grounds. If a no-merit brief is filed, counsel's motion and brief will be forwarded by our clerk to Hill, and she will have thirty days within which to raise pro se points in accordance with Rule 4-3(b)(2). The State will be given an opportunity to file a reply brief if pro se points are made.

Rebriefing ordered; motion to withdraw as counsel denied.

BARRETT and BROWN, JJ., agree.

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

One brief only.

his or her own *independent* review, and our own independent review is not a substitute for defense counsel's responsibility under *Anders. Kou Her v. State*, 2015 Ark. 91, 475 S.W.3d 659. Thus, while those rulings may not present a meritorious argument for reversal because of their relationship to the acquitted charges, it is counsel's responsibility to make such a determination in the first instance.

⁴We note that the list of deficiencies noted above should not be considered exhaustive, and we encourage counsel to review the requirements of a no-merit brief if he intends to refile his motion to withdraw.